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# *Scenes of Subjection*

TERROR, SLAVERY, AND SELF-MAKING  
IN NINETEENTH-CENTURY AMERICA

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lover, or singing across the Potomac to slaves on the other side. The incompleteness of redress and the constancy of breach and crisis are primary determinants of the force of repetition in black performance and the ambivalent formation of pleasure.

Therefore, rather than think of these practices as providing a reprieve from domination, we must think about pleasure not only in the context of domination but also as an articulation of these tensions, limits, fissures, wounds, and ravages. The ambivalence of the pleasures afforded in the context of slavery was documented in numerous accounts of "fun and frolic." When Anna Lee described Saturday night dances, she emphasized the fact that these dances provided the only occasion for collective gatherings and having fun: "We *had to have* some way to see the other sex and be together, and that was the only time that our master allowed us to be together just among ourselves, and we sure made the best of it cause we generally danced, hollered and had our fun all night long."<sup>121</sup> Rather than the dance providing an occasion for forgetting or escaping the "reality" of slavery, the pleasure such opportunities afforded were bittersweet, fleeting, and tempered by the perpetuity of bondage. Moreover, the pleasure to be had was infected with despair, fear, dissatisfaction, and a desire for freedom, and surreptitious gatherings were haunted by the fear of discovery and reprisal.

If through performance the enslaved "asserted their humanity," it is no less true that performance articulated their troubled relation to the category "human," if only because no absolute line could be drawn between the pleasant path of slave management and the collective articulation of needs, solidarity, and possibility. While the pleasures afforded within the confines of slavery were vulnerable to Douglass's critique of debased amusement and reactionary diversions, they also provided the occasion for small-scale assaults against slavery and opportunities for collective reflection on one's condition. Thus, in this regard, it is impossible to separate the use of pleasure as a technique of discipline from pleasure as a figuration of social transformation.<sup>122</sup> The confusion of the slave's good time and stealing away in these short-lived transports therefore mitigates against absolute assertions about pleasure. The claims made on behalf of pleasure are tenuous, provisional, and double-edged.

In short, pleasure was inseparable from the expenditure and ravishment of the body. As Celeste Avery recalled, at weekly frolics and dances folks would get "broke down from so much dancing."<sup>123</sup> Parties were called drag downs, hoe downs, or dig downs, according to Charles Anderson, because folks would "dig right into it, and give it all they got."<sup>124</sup> Thus it appears that pleasure was inescapably ensnared with expenditure and dissolution—bodies exhausted and restored, lost and regained, anguished and redressed. This state of expenditure, according to Victor Turner, is an integral part of performance process, for in the "breakdown," the individual is "reduced or ground down in order to be fashioned anew."<sup>125</sup> However, the breakdown also illuminates the dilemma of pleasure and possession since the body broken by dance insinuates its other, its double, the body broken by the regimen of labor and (dis)possessed by the chattel principle.<sup>126</sup> This doubling of the body bespeaks the ambivalence of pleasure and illuminates the brutal and myriad uses of slave property and the infinitesimal and innumerable assaults posed in the expression of desire.

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## Seduction and the Ruses of Power

In the very nature of things, he [the slave] is subject to despotism. Law as to him is only a compact between his rulers, and the questions which concern him are matters agitated between them.

—Justice D. L. Wardlaw, *Ex parte Boylston* (1845)

You never knew what it is to be a slave; to be entirely unprotected by law or custom; to have the laws reduce you to the condition of chattel, entirely subject to the will of another.

—Harriet A. Jacobs, *Incidents in the Life of a Slave Girl, Written by Herself* (1861)

The relation between legal interpretation and the infliction of pain remains operative even in the most routine of legal acts.

—Robert Cover, "Violence and the Word" (1986)

I went to converse with Celia (defendant) at the request of several citizens. The object of my conversation was to ascertain whether she had any accomplices in the crime. This was eight or ten days after she had been put into the jail. I asked whether she thought she would be hung for what she had done. She said she thought she would be hung. I then had her to tell the whole matter. She said the old man (Newsome, the deceased) had been having sexual intercourse with her. That he had told her he was coming down to her cabin that night. She told him not to come and if he came she would hurt him. She then got a stick and put it in the corner. He came down that night. There was very little fire in the cabin that night. When she heard him coming she fixed the fire to make a little light. She said his face was towards her and he was standing talking to her when she struck him. He did not raise his hand when she went to strike the first blow but sunk down on a stool towards the floor. Threw his hands up as he sunk down. . . . The stick with which she struck was about as large as the upper part of a . . . chair, but not so long. . . . She said after she had killed him, the body laid a long time, she thought an hour. She did not know what to do with it. She said she would try to burn it.

—*State of Missouri v. Celia, a Slave* (1855)

In nineteenth-century common law, rape was defined as the forcible carnal knowledge of a female against her will and without her consent.<sup>1</sup> Yet the actual or attempted rape of an enslaved woman was an offense neither recognized nor punished by law. Not only was rape simply unimaginable because of purported black lasciviousness, but also its repression was essential to the displacement of white

culpability that characterized both the recognition of black humanity in slave law and the designation of the black subject as the originary locus of transgression and offense. The cases of *State of Missouri v. Celia, a Slave*<sup>2</sup> and *George v. State* averred that the enslaved were not subjects of common law, thus not protected against rape. In other words, slaves were placed solely under the regulation of statutory law (slave codes) and not covered by the common law, though the rape of slave women was not a statutory offense either. Therefore, the repression or effacement of rape can be explained only in part by the inapplicability of common law to the enslaved. Rather, the repression and the negation of this act of violence are central not only to the pained constitution of blackness but also to the figuration and the deployment of sexuality in the context of captivity. Moreover, the disavowal of rape most obviously involves issues of consent, agency, and will that are ensnared in a larger dilemma concerning the construction of person and the calculation of black humanity in slave law since this repression of violence constitutes female gender as the locus of both unredressed and negligible injury.<sup>3</sup>

The dual invocation of person and property made issues of consent, will, and agency complicated and ungainly. Yet the law strove to contain the tensions generated by this seemingly contradictory invocation of the enslaved as property and person, as absolutely subject to the will of another, and as actional subject by relying on the power of feelings or the mutual affection between master and slave and the strength of weakness or the ability of the dominated to influence, if not control, the dominant. The dual invocation of the slave as property and person was an effort to wed reciprocity and submission, intimacy and domination, and the legitimacy of violence and the necessity of protection. By the same token, the law's selective recognition of slave humanity nullified the captive's ability to give consent or act as agent and, at the same time, acknowledged the intentionality and agency of the slave but only as it assumed the form of criminality. The recognition and/or stipulation of agency as criminality served to identify personhood with punishment. Within the terms of the law, the enslaved was either a will-less object or a chastened agent.

If the definition of the crime of rape relies upon the capacity to give consent or exercise will, then how does one make legible the sexual violation of the enslaved when that which would constitute evidence of intentionality, and thus evidence of the crime—the state of consent or willingness of the assailed—opens up a Pandora's box in which the subject formation and object constitution of the enslaved female are no less ponderous than the crime itself or when the legal definition of the enslaved negates the very idea of "reasonable resistance"?<sup>4</sup> We might also consider whether the wanton and indiscriminate uses of the captive body can be made sense of within the heteronormative framing of sexual violation as rape. If a crime can be said, in fact, to exist or is at all fathomable within the scope of any normative understanding of rape, perhaps it can only be apprehended or discerned precisely as it is entangled with the construction of person in slave law and the punitive stipulation of agency as abasement, servility, or criminality. Basically, I attempt to interrogate the legal definition of rape and the limits of the law by looking at issues of will and consent, the relationship between subjectivity and injury, and instances of sexual violence that fall outside the racist and heteronormative framing of rape—that is, the sexual exploitation of slave women cloaked as the legitimate use of property and the

castration and assault of slave men. I feel it is warranted to look at this range of violence as sexual violation because enslaved men were no less vulnerable to the wanton abuses of their owners, although the extent of their sexual exploitation will probably never be known, and because of the elusiveness or instability of gender in relation to the slave as property and the erotics of terror in the racist imaginary, which range from the terrible spectacle of Aunt Hester at the whipping post to the postbellum specter of lynching. In this chapter, I also try to make visible the "crimes" licensed and disavowed by the law by highlighting the state's crimes of omission and the categorization of negligible injury.

What Thomas Jefferson termed the boisterous passions of slavery, the "unremitting despotism" of slave owners, and the "degrading submissions" of the enslaved were curiously embraced, denied, inverted, and displaced in the law of slavery.<sup>5</sup> The boisterous passions bespeak the dynamics of enjoyment in a context in which joy and domination and use and violence could not be separated. As well, this language of passion expresses the essential conflation of force and feeling. The confusion between consent and coercion, feeling and submission, intimacy and domination, and violence and reciprocity constitutes what I term the discourse of seduction in slave law.<sup>6</sup> The discourse of seduction obfuscates the primacy and extremity of violence in master-slave relations and in the construction of the slave as both property and person. To paraphrase John Forrester, seduction is a meditation on liberty and slavery and will and subjection in the arena of sexuality.<sup>7</sup> Seduction makes recourse to the idea of reciprocal and collusive relations and engenders a precipitating construction of black female sexuality in which rape is unimaginable. As the enslaved is legally unable to give consent or offer resistance, she is presumed to be always willing.<sup>8</sup>

If the legal existence of the crime of rape depends upon evaluating the *mens rea* and *actus rea* of the perpetrator and, more important, the consent or nonconsent of the victim, then how does one grapple with issues of consent and will when the negation or restricted recognition of these terms determines the meaning of enslavement?<sup>9</sup> If the commonplace understanding of the "will" implies the power to control and determine our actions and identifies the expressive capacity of the self-possessed and intending subject, certainly this is far afield of the condition or terms of action available to the enslaved. Yet the notion of the will connotes more than simply the capacity to act and to do; rather, it distinguishes the autonomous agent from the enslaved, the encumbered, and the constrained. Furthermore, not only does the extremity of power and the absolute submission required of the slave render suspect or meaningless concepts of consent and will, but also the sheer lack of limitations regarding the violence "necessary" to the maintenance of slave relations—that is, black submission—unmoors the notion of "force." What limit must be exceeded in order that the violence directed at the black body be made legible in the law? In the case of slave women, the law's circumscribed recognition of consent and will occurred only in order to intensify and secure the subordination of the enslaved, repress the crime, and deny injury, for it asserted that the captive female was both will-less and always willing. Moreover, the utter negation of the captive's will required to secure absolute submission was identified as *willful* submission to the master in the topsy-turvy scenario of onerous passions. Within

this scenario, the constraints of sentiment were no less severe than those of violence. The purportedly binding passions of master-slave relations were predicated upon the inability of the enslaved to exercise her will in any ways other than serving the master, and in this respect, she existed only as an extension or embodiment of the owner's rights of property. To act outside the scope of willful submission was to defy the law. The surety of punishment awaited such transgressions.

### The Violence of the Law

In *State of Missouri v. Celia, a Slave*, Celia was prosecuted for the murder of her owner, Robert Newsome. The first time Newsome raped Celia was on the day he purchased her. He only stopped four years later when she killed him. Celia was found guilty by the court and sentenced to death by hanging. Although her attorney argued that the laws of Missouri concerning crimes of ravishment embraced slave women as well as white women and that Celia was acting to defend herself, this argument was rejected by the court. *Missouri v. Celia* raises critical questions about sexuality, agency, and subjectivity. Perhaps this is why the case was never reported or published. Certainly the fact that this case was neglected for over 145 years because it was not cited in any legal index but abandoned in a file drawer at the Callaway County Courthouse is significant. Cases involving cruelty of a sexual nature were often not reported or were omitted from the report of cases.<sup>10</sup> The few cases involving issues of rape and sexual violence that are available in legal indexes, not surprisingly, are civil cases concerned with the recovery of damages for the loss of slave property or criminal cases in which the enslaved and their "crimes," usually efforts to resist, defend, or flee from such violations, are on trial. For example, *Humphrey v. Utz*, a case in which a slave owner sued his overseer for the death of a slave brutally beaten by the overseer and subjected to a range of cruelties that included having his penis nailed to a bedpost, was also omitted from the state report of cases like *Missouri v. Celia*. Similarly, it illuminates the regularity of sexual violence directed at the enslaved and the obscene way in which these atrocities entered the legal record as suits for damage to property or criminal charges made against the enslaved.

As *Missouri v. Celia* demonstrated, the enslaved could neither give nor refuse consent, nor offer reasonable resistance, yet they were criminally responsible and liable. The slave was recognized as a reasoning subject who possessed intent and rationality solely in the context of criminal liability; ironically, the slave's will was acknowledged only as it was prohibited or punished. It was generally the slave's crimes that were on trial, not white offense and violation, which were enshrined as legitimate and thereby licensed, or, obviously, the violence of the law, which in the effort to shift the locus of culpability is conceptualized here in terms of the crimes of the state.<sup>11</sup> In positing the black as criminal, the state obfuscated its instrumental role in terror by projecting all culpability and wrongdoing onto the enslaved. The black body was simply the site on which the "crimes" of the dominant class and of the state were externalized in the form of a threat. The criminality imputed to blacks disavowed white violence as a necessary response to the threatening agency of

blackness. I employ the terms "white culpability" and "white offense" because the absolute submission mandated by law was not simply that of slave to her owner but the submission of the enslaved to all whites.<sup>12</sup>

The assignation of right and blame and privilege and punishment was a central element in the construction of racial difference and the absolute distinctions of status between free white persons and black captives. As the case of *State v. Tackett* made clear, "The relation between a white man and a slave differs from that which subsists between free persons." In this case, the Supreme Court of North Carolina reversed a lower court ruling that convicted a non-slave-owning white for the murder of a slave. (*State v. Tackett* also involved the sexual arrangements of slavery and the conjugal relations of the enslaved, although they were considered incidental to the case. Daniel, the murdered slave, had accused Tackett of "keeping his [Daniel's] wife," Lotty, and threatened to kill him if he did not leave Lotty alone.) The court held that common-law standards of provocation and mitigation were not applicable to the relation between a white man and a slave: "The homicide of a slave may be extenuated by acts, which would not produce a legal provocation if done by a white person."<sup>13</sup> The extenuating circumstances included arrogance, insult, trespass, and troublesome deportment. Acts of homicide, battery, and mayhem were sanctioned if not deemed essential to proper relations of free white persons and black captives and the maintenance of black submission.<sup>14</sup>

White culpability was displaced as black criminality, and violence was legitimated as the ruling principle of the social relations of racial slavery, just as Newsome's constant violations were eclipsed by the criminal agency of Celia. *Missouri v. Celia* illustrates how difficult it is to uncover and articulate the sexual violation of enslaved women exactly because the crime surfaces obliquely and only as the captive confesses her guilt. Ultimately the motive for Celia's act was deemed inadmissible, and her voice was usurped and negated for her white inquisitors spoke for her during the trial. As neither slaves nor free blacks were allowed to testify against whites, the "crime" that precipitated the murder of Newsome was denied.

To assert that Celia was raped is to issue a provocation. It is a declaration intended to shift our attention to another locus of crime. It is to envision the unimaginable, excavate the repressed, and discern the illegible. It is to reveal sentiment and protection as the guise of violence in the legal construction of the captive person and, in particular, the slippage of desire and domination in the loosely constructed term "sexual intercourse." In the trial record, the "sexuality" of Celia was ensnared in the web of others' demands, and the trace of what I risk calling her "desire" was only discernible in the compliance and defiance of these competing claims.<sup>15</sup> As the trial record stated, Newsome had been having "sexual intercourse" with Celia, he "forced her" on the day he purchased her, and, last, George, Celia's enslaved companion, "would have nothing to do with her if she did not quit the old man." "Coercion," "desire," "submission," and "complicity" are the circulating terms that come to characterize the sexuality of Celia, or the enslaved female, less than the way in which she is inhabited by sexuality and her body possessed.<sup>16</sup> Simply put, Celia embodied the vested rights of others.

The abjection of the captive body exceeds that which can be conveyed by the designation of or difference between "slave" women and "free" women. In this



case, what is at issue is the difference between the deployment of sexuality in the contexts of white kinship—the proprietorial relation of the patriarch to his wife and children, the making of legitimate heirs, and the transmission of property—and black captivity—the reproduction of property, the relations of mastery and subjection, and the regularity of sexual violence—rather than the imputed “freedom” of white women or free black women. The engendering of race occurs within these different economies of constraint and by way of divergent methods of sexual control. Kinship and captivity designate radically different conditions of embodiment that reveal the determinacy of race in the deployment of sexuality and underline the particular mechanisms through which bodies are disciplined and regulated.

The (re)production of enslavement and the legal codification of racial subordination depended upon various methods of sexual control and domination: anti-miscegenation statutes, rape laws that made the rape of white women by black men a capital offense, the sanctioning of sexual violence against slave women by virtue of the law’s calculation of negligible injury, the negation of kinship, and the commercial vitiation of motherhood as a means for the reproduction and conveyance of property and black subordination.<sup>17</sup> *Alfred v. State* illuminates the convergence of these varied techniques in maintaining the domination of the enslaved and cultivating the pained and burdened personhood of the enslaved. In *Alfred v. State*, Alfred, a slave, was indicted for the murder of his overseer, Coleman. A witness testified that Alfred admitted having killed the overseer: “The defendant wanted to introduce a witness on his behalf, a slave named Charlotte, who stated that she was the wife of the prisoner. . . . Prisoner’s counsel then proposed to prove, by Charlotte, that about nine or ten o’clock in the morning . . . Coleman ‘had forced her to submit to sexual intercourse with him’; and that she had communicated the fact to the prisoner before the killing.”<sup>18</sup> Although the defense attempted to introduce Charlotte as a witness and thereby prove that Alfred’s action was motivated by the rape of his wife, the district attorney objected to Charlotte’s testimony. The court sustained the objection; the prisoner was convicted and sentenced to death by hanging.<sup>19</sup>

What is at issue here are the ways in which various mechanisms of sexual domination—the repression of rape, the negation of kinship, and the legal invalidation of slave marriage—act in concert. In this instance, sexuality is a central dimension of the power exercised over and against the slave population and entails everything from compulsory couplings to the right to manage life.<sup>20</sup> Charlotte’s testimony was rejected because her relation to Alfred had no legal status, and thus it could not provide an alibi or motive for Alfred’s action. The disallowance of the marital relation, in turn, rendered superfluous Charlotte’s sexual violation.<sup>21</sup> In the rejection of Charlotte as witness, her status as wife and partner of Alfred was negated, her rape displaced as adultery and then dismissed, and the violence that precipitated the overseer’s murder repressed.

It is also significant that the rape of Charlotte is interpreted narrowly within the frame of “outrages of conjugal affections” and as adultery. The defense’s argument focused on the violation of Alfred’s rights as a “husband” rather than on the rape of Charlotte. Alfred’s counsel unsuccessfully argued that “the humanity of our law . . . regards with as much tenderness the excesses of outraged conjugal affections in the negro as in the white man. The servile condition . . . has not deprived

him of his social or moral instincts, and he is as much entitled to the protection of the laws, when acting under their influence, as if he were freed.” The discussion of a husband’s conjugal rights, even if that “husband” is a slave, supplants the rape of the “wife.”<sup>22</sup> In all likelihood, the court denied Alfred the right to vindicate this outrage because the decedent was white. However, in cases of this nature involving other slaves, the court sometimes recognized the husband’s exclusive sexual rights in his wife and “the sudden fury excited by finding a man in the very act of shame with his wife.”<sup>23</sup> Ultimately, the motive for Alfred’s act was deemed irrelevant because of the need to maintain black subordination and the presumably negligible status of the injury.

*Alfred v. State* illuminates the legal mechanisms by which sexuality and subordination were yoked in securing the social relations of slavery. On the one hand, the management of slave sexuality indifferently translated the rape of slave women into adultery or sexual intercourse; on the other, it refused to recognize or grant any legitimacy to relations forged among the enslaved. The rape of black women existed as an unspoken but normative condition fully within the purview of everyday sexual practices, whether within the implied arrangements of the slave enclave or within the plantation household. This is evidenced in myriad ways, from the disregard for polite discourse and the evasion and indirection that euphemized rape as ravishment or sex as carnal knowledge to the utter omission and repression of the crime in slave statute and case law. In this case, the normativity of rape is to be derived from the violence of the law—the identity or coincidence of legitimate uses of slave property and what Hortense Spillers terms “high crimes against the flesh.” In this case, the normativity of sexual violence establishes an inextricable link between racial formation and sexual subjection.<sup>24</sup> As well, the virtual absence of prohibitions or limitations in the determination of socially tolerable and necessary violence sets the stage for the indiscriminate use of the body for pleasure, profit, and punishment.

The legal transposition of rape as sexual intercourse shrouds this condition of violent domination with the suggestion of complicity. Sexual intercourse, regardless of whether it is coerced or consensual, comes to describe the arrangements, however violent, between men and enslaved women. (Enslaved women were also raped by slave men. Women were not protected in these cases either.) What does sexuality designate when rape is a normative mode of its deployment? What set of effects does it produce? How can rape be differentiated from sexuality when “consent” is intelligible only as submission? How can we discern the crime when it is a legitimate use of property or when the black captive is made the originary locus of liability?<sup>25</sup> Does the regularity of violation transform it into an arrangement or a liaison from which the captive female can extract herself, if she chooses, as a lover’s request or adultery would seem to imply?<sup>26</sup> Can she use or wield sexuality as a weapon of the weak? Do four years and two children later imply submission, resignation, complicity, desire, or the extremity of constraint?<sup>27</sup>

It is this slippage that Celia’s act brings to a standstill through the intervention of her will or what inadequately approximates desire. To speak of will or desire broaches a host of issues that revolve upon the terms, dimensions, and conditions of action. Moreover, the term “will” is an overextended approximation of the agency of the dispossessed subject/object of property or perhaps simply unrecognizable in a

context in which agency and intentionality are inseparable from the threat of punishment. It is possible to read this act as a liberation of the captive body, however transient this liberation, or as a decisive shift in embodiment, a movement from Newsome's Celia to Celia's body, though my intention is merely to underscore the act's complexity. The full dimensions of this act and the resignation, courage, or glimpse of possibility that might have fueled it defy comprehensive analysis since we have access to Celia's life only as it has been recorded by her interrogators and rendered as crime. The fateful negotiation of autonomy at the site of the expended and exploited body affirms both the impossibility of consent and the struggle to mitigate the brutal constraints of captivity through an entitlement denied the captive—"no," the prerogative of refusal. Ultimately, Celia was hanged for this refusal. This effort to reclaim the body and experience embodiment as full, inviolate, and pleasurable, not as an extension of another's will or right or as a condition of expenditure or defilement, led Celia to construct a boundary at the threshold of her cabin that would shield her from the tacit violence seen as "befitting" the relation of slave owner and enslaved female. As Leon Higginbotham remarks, the Missouri court in pronouncing Celia's guilt "held that the end of slavery is not merely 'the [economic] profit of the master' but also the joy of the master in the sexual conquest of the slave."<sup>28</sup> Thus, Celia's declaration of the limit was an emancipatory articulation of the desire for a different economy of enjoyment.

### The Bonds of Affection

The effacement of rape in the context of enslavement concerns matters of necessary and tolerable violence, the full enjoyment of the slave as thing, and the form of captive embodiment. The eliding of rape must also be considered in relation to what is callously termed the recognition of slave humanity and the particular mechanisms of tyrannical power that converge on the black body. In this instance, tyranny is not a rhetorical inflation but a designation of the absoluteness of power. Gender, if at all appropriate in this scenario, must be understood as indissociable from violence, the vicious refiguration of rape as mutual and shared desire, the wanton exploitation of the captive body tacitly sanctioned as a legitimate use of property, the disavowal of injury, and the absolute possession of the body and its "issue." In short, black and female difference is registered by virtue of the extremity of power operating on captive bodies and licensed within the scope of the humane and the tolerable.<sup>29</sup>

The violence commensurate with the exercise of property rights and essential to the making of perfect submission was dissembled in regard to sexual violation by black female "excesses"—immoderate and overabundant sexuality, bestial appetites and capacities that were most often likened to those of the orangutan, and an untiring readiness that was outstripped only by the black females' willingness.<sup>30</sup> Lasciviousness made unnecessary the protection of rape law, for insatiate black desire presupposed that all sexual intercourse was welcomed, if not pursued. The state's crimes of omission and proaction—the failure to extend protection and the sanctioning of violence in the name of rights of property—disappeared before the

spectacle of black concupiscence. The nonexistence of rape as a category of injury pointed not to the violence of the law but to the enslaved woman as a guilty accomplice and seducer. However, the omissions of law must be read symptomatically within an economy of bodies in which the full enjoyment of the slave as thing depended upon unbounded authority and the totalizing consumption of the body in its myriad capacities.<sup>31</sup>

The construction of black subjectivity as will-less, abject, insatiate, and pained and the instrumental deployment of sexuality in the reproduction of property, subordination, and racial difference usurped the category of rape. Sexuality formed the nexus in which black, female, and chattel were inextricably bound and acted to intensify the constraints of slave status by subjecting the body to another order of violations and whims.<sup>32</sup> The despotic ravages of power made violence indistinguishable from the full enjoyment of the thing. The tensions generated by the law's dual invocation of property and person, or by "full enjoyment" and limited protection to life and limb, were masked by the phantasmal ensnaring agency of the lascivious black.<sup>33</sup> Rape disappeared through the intervention of seduction—the assertion of the slave woman's complicity and willful submission. Seduction was central to the very constitution and imagination of the antebellum South for it provided a way of masking the antagonistic fissures of the social by ascribing to the object of property an ensnaring and criminal agency that acted to dissimulate the barbarous forms of white enjoyment permitted within the law.

The discourse of seduction enabled those disgusted and enraged by the sexual arrangements of slavery, like Mary Boykin Chesnut, to target slave women as the agents of their husbands' downfall. The complicity of slave women displaced the act of sexual violence. According to Chesnut, decent white women were forced to live with husbands degraded by the lowliness of their enslaved "mistresses": "Under slavery, we lived surrounded by prostitutes, yet an abandoned woman is sent out of any decent house. Who thinks any worse of a Negro or mulatto woman for being a thing we can't name?"<sup>34</sup> The sexual exploitation of the enslaved female, incredulously, served as evidence of her collusion with the master class and as evidence of her power, the power both to render the master weak and, implicitly, to be the mistress of her own subjection. The slave woman not only suffered the responsibility for her sexual (ab)use but also was blameworthy because of her purported ability to render the powerful weak.

Even those like Fanny Kemble, who eloquently described the "simple horror and misery" that slave women regularly experienced, were able to callously exclaim, when confronted with the inescapable normativity of rape and the "string of detestable details" that comprised the life of enslaved women, after yet another woman, Sophy, shared her experience of violation: "Ah! but don't you know—did nobody ever teach any of you that it is a sin to live with men who are not your husbands?!"<sup>35</sup> Sophy, appropriately and vehemently, responded, "Oh, yes, missis, we know—we know all about dat well enough; but we do anything to get our poor flesh some rest from the whip; when he made me follow him into de bush, what use me tell him no? He have strength to make me."<sup>36</sup>

The equivocations that surround issues of consensual sexual relations under domination, the eliding of sexual violence by the imputation of the slave woman's

ensnaring sexual agency or lack of virtue, and the presumption of consent as a consequence of the utter powerlessness of her "no" (the "no means yes" philosophy) are important constituents of the discourse of seduction. In a more expansive or generic sense, seduction denotes a theory of power that demands the absolute and "perfect" submission of the enslaved as the guiding principle of slave relations and yet seeks to mitigate the avowedly necessary brutality of slave relations through the shared affections of owner and captive. The doctrine of "perfect submission" reconciled violence and the claims of mutual benevolence between master and slave as necessary in maintaining the harmony of the institution. The presumed mutuality of feelings in maintaining domination enchanted the brutal and direct violence of master-slave relations. Bearing this in mind, the term "seduction" is employed here to designate this displacement and euphemization of violence, for seduction epitomizes the discursive alchemy that shrouds direct forms of violence under the "veil of enchanted relations"—that is, the reciprocal and mutual relations of master and slave.<sup>37</sup> This mining of the discourse of seduction attempts to illuminate the violence obscured by the veil through an interrogation of the language of power and feelings, specifically the manipulations of the weak and the kindheartedness and moral instruction of the powerful.

The benign representation of the paternal institution in slave law depicted the master-slave relationship as typified by the bonds of affection and thereby transformed relations of violence and domination into those of affinity. This benignity depended upon a construction of the enslaved black as one easily inclined to submission, a skilled maneuverer wielding weakness masterfully and a potentially threatening insubordinate who could only be disciplined through violence. If what is at stake in social fantasy is the construction of a nonantagonistic, organic, and complementary society, then the ability of the South to imagine slavery as a paternal and benign institution and master-slave relations as bound by feelings depended on the specter of the obsequious and threatening slave, for this Manichaean construction undergirded both the necessary violence and the bonds of affection set forth in slave law. As well, this fantasy enabled a vision of whiteness defined primarily by its complementary relation to blackness and by the desire to incorporate and regulate black excess.<sup>38</sup> Seduction thus provided a holistic vision of social order, not divided by antagonisms and precariously balancing barbarism and civilization, violence and protection, mutual benevolence and absolute submission, and brutality and sentiment. This harmonious vision of community was made possible by the exercise of violence, the bonds of affection, and the consonance of the weak and the powerful.

How does seduction uphold perfect submission and, at the same time, assert the alluring, if not endangering, agency of the dominated? It does so by forwarding the strength of weakness. As a theory of power, seduction contends that there is an ostensible equality between the dominant and the dominated. The dominated acquire power based upon the identification of force and feeling. As Jean Baudrillard writes, "Seduction play[s] triumphantly with weakness."<sup>39</sup> The artifice of weakness not only provides seduction with its power but also defines its essential character, for the enactment of weakness and the "impenetrable obscurity" of femininity and blackness harbor a conspiracy of power.<sup>40</sup> The dominated catalyze reversals of power, not by challenges presented to the system but by succumbing to the system's logic. Thus

power comes to be defined not by domination but by the manipulations of the dominated. The reversibility of power and the play of the dominated discredit the force of violence through the assertion of reciprocal and intimate relations. In this regard, the recognition of the agency of the dominated and the power of the weak secures the fetters of subjection, while proclaiming the power and influence of those shackled and tethered.

The proslavery ideologue George Fitzhugh, like Baudrillard, also celebrated the reversibility of power enacted through surrender. In *Cannibals All! or, Slaves without Masters*, Fitzhugh argued that the strength of weakness disrupts the hierarchy of power within the family, as well as the master-slave relationship. Appearances conspire to contrary purposes; thus the seemingly weak slave, like the infant or (white) woman, exercises capricious dominion: "The dependent exercise, because of their dependence, as much control over their superiors, in most things, as those superiors exercise over them. Thus and thus only, can conditions be equalized."<sup>41</sup> Seduction appears to be a necessary labor, one required to extend and reproduce the claims of power, though advanced in the guise of the subaltern's control and disruptions: "The humble and obedient slave exercises more or less control over the most brutal and hard-hearted master. It is an invariable law of nature, that weakness and dependence are elements of strength, and generally sufficiently limit that universal despotism, observable throughout human and animal nature."<sup>42</sup> If, as Fitzhugh insists, the greatest slave is the master of the household, and the enslaved rule by virtue of the "strength of weakness," then, in effect, the slave is made the master of her subjection.

As Fitzhugh envisioned, kindness and affection undergirded the relations of subordination and dependency. As a model of social order, the patriarchal family depended upon duty, status, and protection rather than consent, equality, and civil freedom. Subjection was not only naturalized but also consonant with the sentimental equality of reciprocity, inasmuch as the power of affection licensed the strength of weakness. Essentially, "the strength of weakness" prevailed due to the goodness of the father, "The armor of affection and benevolence." The generosity of the father enabled the victory claimed by the slave, the tyrannical child, and the brooding wife. The bonds of affection within the slaveholding family circle permitted the tyranny of weakness and supplanted the stranglehold of the ruling father. Ironically, the family circle remained intact as much because of the bonds of affection as because of the tyranny of the weak. Literally, the forces of affection bound the interests of the master and those of the slave in a delicate state of equilibrium, as one form of strength modified the other.<sup>43</sup> Thus we are to believe that the exercise of control by the weak softens universal despotism, subdues the power of the father by commanding his care, and guarantees the harmony of slave relations.

Seduction erects a family romance—in this case, the elaboration of a racial and sexual fantasy in which domination is transposed into the bonds of mutual affection, subjection idealized as the pathway to equality, and perfect subordination declared the means of ensuring great happiness and harmony. The patriarchal model of social order erected by Fitzhugh marries equality and despotism through an explicit critique of consent, possessive individualism, and contractual relations.<sup>44</sup> Feelings rather than contract are the necessary corrective to universal despotism; therefore,



duty and reciprocity rather than consent become the basis for equality. The despotic and sovereign power celebrated by Fitzhugh could only be abated by the "bonds of affection," a phrase that resonates with the ambivalence attendant to the attachments and constraints that characterize the relation of owner and object.

If a conspiracy of power resides within seduction, then questions arise as to the exact nature of this conspiracy: Who seduces whom? Does the slave become entrapped in the enchanted web of the owner's dominion, lured by promises of protection and care? Does the guile and subterfuge of the dependent mitigate the effects of power? Are the manipulations and transgressions of the dominated fated to reproduce the very order presumably challenged by such actions? Or do such enactments on the part of the owner and the enslaved, the feigned concessions of power and the stylized performance of naïveté, effect any shifts or disruptions of force or compulsively restage power and powerlessness?

Seduction reifies the idea of submission by proclaiming it the pathway to ostensible equality, protection, and social harmony. As expounded by proslavery ideologues like Fitzhugh or as a legal principle guiding master-slave relations, seduction professed that power and protection were acquired through surrender. To reiterate the tautology, the dominated exert influence over the dominant by virtue of their weakness, and therefore more formal protections against despotism or guarantors of equality are redundant, if not unnecessary. The insinuation that the dominated were mutually invested in their subjugation recast violence in the ambiguous guise of affection and declared hegemony rather than domination the ruling term of order.<sup>45</sup> The assertion that coercion and consent characterized the condition of enslavement can be seen in the implied and explicit promises of protection extended by the law.

The incessant reiteration of the necessity of submission—the slave must be subject to the master's will in all things—upheld submission as the guiding principle of slave relations, if not the central element in the trinity of savagery, sentiment, and submission. Slave law ensured the rights of property and the absolute submission of the slave, while attending to limited forms of slave subjectivity. The law granted slave owners virtually absolute rights and militated against the abuses of such authority by granting limited protection to slaves against "callous and cold-blooded" murder, torture, and maiming, although procedural constraints, most notably the fact that a slave or free black could not act as witness against a white person, acted as safeguards against white liability and made these laws virtually impossible to enforce. In the effort to attend to the interests of master and slave, the law elaborated a theory of power in which the affection of slave owners and the influence of the enslaved compensated for its failures and omissions. It contended that affection and influence bridged the shortcomings of law concerning the protection of black life. The ethic of perfect submission recognized the unlimited dominion of the slave owner yet bounded this dominion by invoking the centrality of affections in regulating the asymmetries of power in the master-slave relation.<sup>46</sup> The dual existence of the slave as property and person and the interests and absolute dominion of the slave owner were to be maintained in precarious balance by forwarding the role of affection in mitigating brutality.

The case of *State v. Mann*, although it doesn't specifically involve issues of sexuality or rape, is important in considering the place of affection, violence, and surrender in the law. Mann was indicted for assault and battery upon Lydia, a slave of Elizabeth Jones whom he had hired for a year: "During the term, the slave had committed some small offence, for which the Defendant undertook to chastise her—that while in the act of so doing, the slave ran off, whereupon the Defendant called upon her to stop, which being refused, he shot and wounded her."<sup>47</sup> The lower court convicted Mann, finding him guilty of "cruel and unwarrantable punishment, and disproportionate to the offense committed by the slave." However, in an appeal to the North Carolina Supreme Court, the decision was reversed. While the liability of the hirer, Mann, to the owner for an injury presumably impairing the value of slave property was left to general rules of bailment, the charges of criminal battery were overturned. Even if the injury diminished the value of slave property, it was not indictable as cruel and unreasonable battery. The court held that the power of the master was absolute and not a subject for discussion.<sup>48</sup>

The higher court ruling held that the master had absolute power to render the submission of the slave perfect; yet it was also argued that the harshness of such a principle would be regulated not by existing legislation but by feelings—the benevolence and affection between master and slave and the ruling moral code. In other words, the court considered affection to be an internal regulating principle of slave relations. The Supreme Court reversed the decision of the lower court on the following grounds: the power of the master had to be absolute in order "to render the submission of the slave perfect" although "as a principle of moral right, every person in his retirement must repudiate it. But in the actual condition of things it must be so." Yet the harshness implied by this difficult yet unavoidable decision would be regulated by "the protection already afforded by several statutes (which made it illegal to murder a slave in cold blood), . . . the private interest of the owner, the benevolence toward each other, seated in the hearts of those who have been born and bred together, [and] the . . . deep execrations of the community upon the barbarian, who is guilty of excessive cruelty to his unprotected slave" (emphasis mine).

Although the court acknowledged that the scope of such absolute rights of property left the enslaved open to violent abuses, it also recognized that the right to abuse had to be guaranteed for the perpetuation of the institution, since the amorphous "public good" mandated the absolute subordination of the enslaved. The opinion amended this brutal admission with the assurance that the rights of ownership generally precluded such abuses because of self-interest, that is, pecuniary considerations. The rights of ownership, even temporary rights of possession, permitted any and all means necessary to render perfect submission; however, it was hoped that the use of excessive force was unnecessary because of the reciprocal benevolence of master-slave relations.

Rather than distinguish between implied relations and absolute dominance or separate affection from violence, the court considered them both essential to the maintenance and longevity of the institution of slavery. In short, the ethic of submission indiscriminately included absolute power and human feelings, for on one hand, the court admitted that the obedience of the slave was "the consequence only of uncontrolled authority over the body." How else could perpetual labor and submis-



sion be guaranteed? The services of one "doomed in his person and his posterity" and "without knowledge or the capacity to make anything his own, and to toil that another may reap the fruits" could only be expected of "one who has no will of his own" and "who surrenders his will in perfect obedience to that of another."<sup>49</sup> To be sure, the power of the master had to be absolute to produce this surrender of the will.

Not only was perfect submission an ordering principle of the social, to be accomplished by whatever violent means necessary, regardless of how brutal, but also this conceptualization of power relations depended upon feelings, not law, to guarantee basic protections to the enslaved. Submission not only encompassed the acquisition of power but also explicitly addressed the power of affection in influencing relations between master and slave, although the court distinguished between the relationship of master and slave and other domestic relations it was frequently compared with, like those of a parent and child, tutor and pupil, and master and servant. The centrality ascribed to the role of feelings implicitly acknowledged the unrestricted violence the *Mann* opinion had licensed yet minimized the consequences of this through an appeal to "moral right" rather than the actual condition of things. Feelings were to balance the use and role of force. As Judge Ruffin states: "I must freely confess my sense of the harshness of this proposition; I feel it as deeply as any man can; and as a principle of moral right every person in his retirement must repudiate it. But in the actual condition of things it must be so."

The importance attributed to the intimacies of domination illustrates the role of seduction in the law. As the opinion clearly stated, power resided not only in the title to slave property but also in the bonds of affection. Feelings repudiated and corrected the violence legitimated by law. Material interests and mutual benevolence would "mitigat[e] the rigors of servitude and ameliorat[e] the condition of the slave" and protect the slave from the ravages of abuse unleashed by the ruling. In other words, the brutal dominion guaranteed by the law was to be regulated by the influence of the enslaved—their pull on the heartstrings of the master. Slave law contradictorily asserted that absolute dominion was both necessary and voluntary. The intimacy of the master and the slave purportedly operated as an internal regulator of power and ameliorated the terror indispensable to unlimited dominion. The wedding of intimacy and violent domination as regulatory norms exemplifies the logic through which violence is displaced as mutual and reciprocal desire.

The significance attributed to feelings, attachment, and the familiarity of domestic slavery rendered domination in a heartwarming light. The power of influence invested in the enslaved—the power of the weak to sway the powerful—and the place attributed to feeling in regulating the excesses of market relations refigured relations of domination and exploitation in the garb of affection, family, and reciprocal obligations. Such reasoning held that violence was both necessary and tolerable, while insisting that feelings determined the character of the master-slave relationship and informed social, familial, and political organization. In short, slave relations were dependent upon and determined by "the action taking place in individual hearts."<sup>50</sup>

The contradictory appeal to the public good contended that public tranquillity required violence and, at the same time, served as the guarantee that this entitlement to virtually unlimited power need never be exercised. The invocation of the public

good authorized necessary violence and established minimal standards for the recognition of slave humanity. Just as the appeal to the public good mandated absolute submission, it also required that certain provisions or protections be granted to the enslaved, like housing, clothing, food, and support for elderly and infirm slaves. Yet this concern for the welfare of the enslaved and the provisions granted them should not be mistaken for a dispensation of rights. As a judge commented in another case that hinged on determining degrees of necessary and excessive violence, although excessive violence "disturbed the harmony of society, was offensive to public decency, and directly tended to a breach of peace," the rights of the slave were extraneous to such considerations: "The same would be the law, if a horse had been so beaten. And yet it would not be pretended that it was in respect to the rights of the horse, or the feelings of humanity, that this interposition would take place."<sup>51</sup> The public good mandated absolute submission and minimal protections intent upon maintaining harmony and security. Even when the entreaty made in the name of the public good acted minimally on the behalf of the enslaved, it did so, not surprisingly, by granting these limited entitlements in a manner that "recognized" black humanity in accordance with minimal standards of existence. This truncated construction of the slave as person, rather than lessening the constraints of chattel status, enhanced them by making personhood conterminous with injury.

Although the public good served as the arbiter of care and coercion, the precarious status of the slave within this sphere raises questions about the meaning of the slave person, the protections advanced on the slave's behalf, and the limited concerns of public decency. Contrary to pronouncements that sentiment would abate brutality, feelings intensified the violence of law and posed dire consequences for the calculation of black humanity, for the dual existence of the slave as object of property and person required that the feelings endowed to the enslaved be greatly circumscribed. While the slave was recognized as a sentient being, the degree of sentence had to be cautiously calibrated in order to avoid intensifying the antagonisms of the social order. How could property and person be reconciled on the ground of mutual benevolence and affection? How could the dual invocation of humanity and interest be sustained?

The dual existence of the slave as person and property was generated by the slave mode of production.<sup>52</sup> The law attempted to resolve the contradiction between the slave as property and the slave as person/laborer or, at the very least, to minimize this tension by attending to the slave as both a form of property and a person. This effort was instrumental in maintaining the dominance of the slave-owning class, particularly in a period of national crisis concerning the institution. The increasing recognition of the slave person in the period 1830–1860 was an effort to combat the abolitionist polemic about the degradations of chattel status and the slave's lack of rights.<sup>53</sup> In any case, the dual invocation of slave law was neither a matter of an essential ethical contradiction nor a conflict between bourgeois and slave relations but an expression of the multivalence of subjection. The dual invocation quite easily accommodated the restricted recognition of the slave as person and the violence necessary to the accumulation of profit and the management of a captive population, since the figuration of the humane in slave law was totally consonant with the domination of the enslaved. The constitution of the slave as person was not at odds

with the structural demands of the system, nor did it necessarily challenge the social relations of the antebellum world.

Rather, the dual invocation of law designated the limits of rights of ownership and extended and constricted these rights as was necessary for the preservation of the institution. On one hand, there was increased liability for white violence committed against slaves; and on the other, the law continued to decriminalize the violence thought necessary to the preservation of the institution and the submission and obedience of the slave. If anything, the dual invocation of law generated the prohibitions and interdictions designed to regulate the violent excesses of slavery and at the same time extended this violence in the garb of sentiment. The recognition of the slave as subject and the figuration of the captive person in law served to explicate the meaning of dominion. To be subject in this manner was no less brutalizing than being an object of property.<sup>54</sup>

In the arena of affect, the body was no less vulnerable to the demands and the excesses of power. The bestowal that granted the slave a circumscribed and fragmented identity as person in turn shrouded the violence of such a beneficent and humane gesture. Bluntly stated, the violence of subjection concealed and extended itself through the outstretched hand of legislated concern. The slave was considered a subject only insofar as he was criminal(ized), wounded body, or mortified flesh. This construction of the subject seems rather at odds with a proclaimed concern for the "total person."<sup>55</sup> However, it does not mean that the efforts to regulate the abuses of slavery were any less "genuine" but that in the very efforts to protect the enslaved from the ravages of the institution, a mutilation of another order was set in motion. Protection was an exemplary dissimulation for it savagely truncated the dimensions of existence, inasmuch as the effort to safeguard slave life recognized the slave as subject only as he violated the law or was violated (wounded flesh or pained body). Thus rendered, "person" signified little more than a pained body or a recalcitrant in need of punishment.<sup>56</sup>

The designation of person was inescapably bound to violence, and the effort to protect embodied a degree of violence no less severe than the excesses being regulated. Despite the law's proclaimed concern for slave life or recognition of black humanity, minimal standards of existence determined personhood, *for the recognition of the slave as person depended upon the calculation of interest and injury*. The law constituted the subject as a muted pained body or a trespasser to be punished; this agonized embodiment of subjectivity certainly intensified the dreadful objectification of chattel status. Paradoxically, this designation of subjectivity utterly negated the possibility of a nonpunitive, inviolate, or pleasurable embodiment, and instead the black captive vanished in the chasm between object, criminal, pained body, and mortified flesh.<sup>57</sup> The law's exposition of sentiment culminated in a violent shuttling of the subject between varied conditions of harm, juggled between the plantation and the state and dispersed across categories of property, injury, and punishment.

### The Measure of Humanity

In *Inquiry into the Law of Negro Slavery*, Thomas Cobb explicated the conditions in which the dominion of the master and the person of the slave were to be

accommodated in the law. In examining the dual character of the slave as person and property and the particular dimensions of personhood in common law and slave statutes, Cobb contended that the slave was recognized first as person and second as property, largely because in all slaveholding states "the homicide of a slave is held to be murder, and in most of them, [this] has been so expressly declared by law"; and even when not expressly declared by law, the principles of Christian enlightenment extend protection to life and limb.<sup>58</sup> Notwithstanding, he argued that slaves were not proper subjects of common law and proposed a minimal definition of protection of life and limb.

The calculation of slave existence was determined by base conditions necessary for functioning as an effective laborer, and the extent of protection to life and limb was decided by diminutions in the value of capital. Within these boundaries, degrees of injury and magnitudes of labor decided the meaning of the slave person. It is difficult to acknowledge this savage quantification of life and person as a recognition of black humanity, for as argued earlier, this restricted stipulation of humanity intensified the pained existence of the enslaved. This scale of subjective value was a complement rather than a corrective to the decriminalization of white violence that was the foundation of slave law.<sup>59</sup> Although this recognition of slave humanity was intended to establish criminal liability for acts of violence committed upon slaves, in the end it relied upon the diminutions in the value of property in determining and recognizing injury. In other words, the "corrective" resembled the ailment in that the effort to recognize humanity resulted in the reinscription of black life as property, for the scale of subjective value was inescapably bound to the use and value of property. The consequences of this construction of person intensified injury in the very name of redress. Moreover, the selective inclusion of the slave into the web of rights and duties that comprised the common law demonstrated the tentativeness of this recognition of personhood.

Not surprisingly, Cobb's calibrations and the law's severely circumscribed dimensions of person constituted "woman" as a condition of negligible and unredressed injury in its dismissal of sexual violence as an "offense not affecting the existence of the slave."<sup>60</sup> I argue that this constituted woman as a condition of negligible injury in slave law because unlike other forms of violence like maiming or battery, rape was not penalized by slave statute, nor were owners likely to pursue suits for "trespasses" on their property. This simultaneously made the body prey to sexual violence and disavowed this violence and injury. The ravished body, unlike a broken arm or leg, did not bestow any increment of subjectivity because it did not decrease productivity or diminish value—on the contrary, it might actually increase the captive's magnitude of value—nor did it, apparently, offend the principles of Christian enlightenment. It was declared to be inconsequential in the calculation of slave subjectivity and not within the rights and protections granted the enslaved:

If the general provision of the law against murder should be held to include slaves, why not all other penal enactments, by the same course of reasoning, be held to include similar offences when committed on slaves, without their being specifically named? . . . The law, by recognizing the existence of the slave as person, thereby confers no rights or privileges except such as are necessary to protect that existence. All other rights should be granted specially. Hence, the penalties for rape would not and should not, by such implication, be made to extend to carnal forcible knowledge of a

slave, that offense *not affecting the existence* of the slave, and that existence being the extent of the right which the implication of the law grants.<sup>61</sup>

Cobb, concerned with the neglect of sexual injury and the failure to protect slave women from rape in slave law, stated that "although worthy of consideration by legislators," it need not cause undue concern because "the occurrence of such an offense is almost unheard of; and the known lasciviousness of the negro, renders the possibility of its occurrence very remote."<sup>62</sup> As the black male's nature made "rape too often an occurrence," the black female's imputed lasciviousness removed it entirely from consideration. It is not simply fortuitous that gender emerges in relation to violence—that is, gender is constituted in terms of negligible and unredressed injury and the propensity for violence. The en-gendering of race, as it is refracted through Cobb's scale of subjective value, entails the denial of sexual violation as a form of injury while asserting the prevalence of sexual violence due to the rapacity of the Negro. While Cobb's consideration of sexual violation initially posits gender differences within the enslaved community in terms of female victim and male perpetrator, ultimately the "strong passions" of the Negro—in this instance, lust and lasciviousness—ultimately annul such distinctions and concomitantly any concerns about "the violation of the person of a female slave." Since, according to Cobb, blacks were endowed less with sexuality than with criminality, they were in need of discipline rather than protection, since as sexual subjects they were beyond the pale of the law and outside the boundaries of the decent and the nameable.

In *George v. State*, George, a slave, was indicted for rape under a statute making it a crime to have sex with a child under ten years of age. The Mississippi Supreme Court overturned a lower-court ruling that convicted George for the rape of a female slave under ten years old and sentenced him to death by hanging. The attorney for George cited Cobb's *Law of Slavery* in his argument before the court, declaring that "the crime or rape does not exist in this State between African slaves. Our laws recognize no marital rights as between slaves; their sexual intercourse is left to be regulated by their owners. The regulations of law, as to the white race, on the subject of sexual intercourse, do not and cannot, for obvious reasons, apply to slaves; their intercourse is promiscuous, and the violation of a female slave by a male slave would be mere assault and battery."<sup>63</sup> According to George's attorney, the sexual arrangements of the captive community were so different from those of the dominant order that they were beyond the reach of the law and best left to the regulation of slave owners. The Mississippi Supreme Court concluded that based on a "careful examination of our legislation on this subject, we are satisfied that there is no act which embraces either the attempted or actual commission of a rape by a slave on a female slave. . . . Masters and slaves cannot be governed by the same common system of laws: so different are their positions, rights, and duties." The lower court's judgment was reversed, the indictment quashed, and the defendant discharged on the grounds that "this indictment cannot be sustained, either at common law or under our statutes. It charges no offence known to either system." The opinion held that slaves were not subject to the protection of common law and that earlier cases in which whites were prosecuted for the murder of slaves under common law were founded on "unmeaning twaddle. . . . 'natural law,' 'civilization

and Christian enlightenment,' in amending *proprio vigore*, the rigor of the common law."

If subjectivity is calculated in accordance with degrees of injury and sexual violation is not within the scope of offenses that affected slave existence, what are the consequences of this repression and disavowal in regard to gender and sexuality? Does this callous circumscription of black sentence define the condition of the slave female, or does it challenge the adequacy of gender as a way of making sense of the inscription and exploitation of captive bodies? Put differently, what place does the enslaved female occupy within the admittedly circumscribed scope of black existence or slave personhood? As a consequence of this disavowal of offense, is her scope of existence even more restricted? Does she exist exclusively as property? Is she insensate? What are the repercussions of this construction of person for the meaning of "woman"?

The "too common occurrence of offence" and an "offence not effecting existence" differentiated what Cobb described as the strongest passion of blacks—lust—into gendered categories of ubiquitous criminality and negligible injury. Such designations illuminate the concerted processes of racialization, accumulation, engenderment, domination, and sexual subjection. Here it is not my intention to reproduce a heteronormative view of sexual violence as only and always directed at women or to discount the "great pleasure in whipping a slave" experienced by owners and overseers or eliminate acts of castration and genital mutilation from the scope of sexual violence but rather to consider the terms in which gender—in particular, the category "woman"—becomes meaningful in a legal context in which subjectivity is tantamount to injury. The disavowal of sexual violence is specific not only to engendering "woman" in this particular instance but also to the condition of enslavement in general. In cases like *Humphrey v. Utz* and *Werley v. State*, essentially what was being decided was whether acts of genital mutilation and castration (legally defined as acts of mayhem) were crimes when perpetuated against the enslaved or acts of just and reasonable violence. Obviously, the quotidian terror of the antebellum world made difficult the discernments of socially tolerable violence versus criminal violence. How did one identify "cruel" treatment in a context in which routine acts of barbarism were considered not only reasonable but also necessary?

To return to the central issues, the law's selective recognition of slave personhood in regard to issues of injury and protection failed to acknowledge the matter of sexual violation, specifically rape, and thereby defined the identity of the slave female by the negation of sentence, an invulnerability to sexual violation, and the negligibility of her injuries. However, it is important that the decriminalization of rape not be understood as dispossessing the enslaved of female gender, but in terms of differential production of gendered identity or, more specifically, the adequacy or meaning of gender in this context. Therefore, what is at stake here is not maintaining gender as an identitarian category but rather examining gender formation in relation to property relations, the sexual economy of slavery, and the calculation of injury.

The weighing of person and property—the limited recognition of the slave as person, to the extent that it did not interfere with the full enjoyment of the slave as



thing—endowed the enslaved with limited protections and made them vulnerable to injury, precisely because the recognition of person and the calibration of subjectivity were consonant with the imperatives of the institution. The protection of property (defined narrowly by work capacity and the value of capital), the public good (the maintenance of black subordination), and the maintenance and reproduction of the institution of slavery determined the restricted scope of personhood and the terms of recognition.<sup>64</sup> These concerns also governed the regulation and nullification of mothering and the protections extended to white women in order to control their sexual conduct and consolidate black subordination.<sup>65</sup> The affiliation of sexuality, property, and injury and the particular determination of “offences to existence” and alienable or extricable features of the slave person are illuminated by the negation of black parenting and the law’s protection of white women.

In the case of motherhood, the reproduction and conveyance of property decided the balance between the limited recognition of slave humanity and the owner’s rights of property in favor of the latter. The maternal function was not enshrined with minimal or restricted rights but indistinguishable from the condition of enslavement and its reproduction. Motherhood was critical to the reproduction of property and black subjection, but parental rights were unknown to the law. This negation was effected in instances that ranged from the sale and separation of families to the slave owner’s renaming of black children as a demonstration of his power and dominion. The issue of motherhood concerned the law only in regard to the disposition and conveyance of property and the determination and reproduction of subordinate status. The concept of “injury” did not encompass the loss of children, natal alienation, and enforced kinlessness. The law’s concern with mothering exclusively involved questions of property: diminutions in the value of slave property if the slave female was unable to reproduce or disputes regarding the conveyance and loss of property—lest we forget, we are talking about children here. Motherhood, specifically, and parenting, in general, were social relations without legal recognition in terms of either positive or negative entitlements.<sup>66</sup>

The relations between protection, injury, and property and the constitutents and entitlements of “woman” are also illuminated by the laws concerning miscegenation, seduction, and rape, for the protection extended white women reveals not only the indeterminacy of rights but also the way in which these entitlements are used to secure, if not intensify, subordination. In this case, “protection” operated in concert with the maintenance of racial and gender hierarchies and as an instrument of social control. For example, the civil remedy for seduction required an action by the father in which the suit for damages was conducted under the guise of the master-servant relationship. Damages were awarded on the basis of lost services.<sup>67</sup> In cases of seduction, the protection extended women was articulated not in the form of their embodied rights but in terms of the master’s entitlement to his servant’s services and the right to compensation for the injury or impairing of his servant. These laws sheltered white women from harm as they intensified the regulation and control of white female sexuality, since this security depended upon chaste and virtuous behavior and an allegiance to racist regulatory norms. The selective protection of the law only encompassed “respectable” women, and this respect ultimately depended upon the legitimate proprietary rights of men over female sexuality. (As neither

black fathers nor husbands bore any sanctioned or lawful relation to black women, they existed outside the circle of protection in this regard, too.)

Proper and legitimate relations determined a white woman’s respectability. In cases of rape involving white women and black men, the charges were sometimes dismissed if these women were known to associate with blacks. White women’s interracial liaisons with black men denied them the protection of the law. As well, the fact that the rape of black women was not a crime had important consequences for white women. The minimal conditions of existence deemed tolerable for slave women made it necessary to secure whiteness in order to guarantee that only white women received certain protections. The fact that slave women were not subject to the protection of common law (or slave law) regarding rape mandated that the whiteness of white women raped by slave men or by free black men had to be established in order to prosecute the assailant. Cases were dismissed in which the race of white women was not explicitly declared.

In *Commonwealth v. Jerry Mann*, Mann had been indicted, tried, and convicted for “feloniously making an assault upon a woman, with intent to ravish her. The law declares that if a slave shall attempt to ravish a white woman, he shall be adjudged a felon.”<sup>68</sup> However, the judgment was arrested because “it was nowhere in the indictment stated, that Mary M’Causland was a white woman.” In *Grandison (a Slave) v. State*, Grandison was convicted of assault and battery with intent to ravish Mary Douglass.<sup>69</sup> He was sentenced to death. But the judgment was reversed and arrested, and the prisoner was remanded to jail because “such an act committed on a black woman, would not be punished with death. . . . This fact [that the woman assaulted was white] gives to the offence its enormity. . . . [It] must be charged in the indictment and proved on trial.” Yet the “enormity of offence” and “offences not effecting existence” are neither endowments nor dispossessions of gender but instead demonstrate the manner in which deployments of sexuality act concertedly with processes of racialization, accumulation, and domination.

It is necessary to belabor the issue because too often it has been argued that the enslaved female existed outside the gendered universe because she was not privy to the entitlements of bourgeois women within the white patriarchal family. As a consequence, gender becomes a descriptive for the social and sexual arrangements of the dominant order rather than an analytic category. As well, it naturalizes the discourse of protection and mystifies its instrumental role in the control and disciplining of body, and, more important, maintains the white normativity of the category “woman.” What I am attempting to explore here is the divergent production of the category woman rather than a comparison of black and white women that implicitly or inadvertently assumes that gender is relevant only to the degree that generalizable and universal criteria define a common identity. Can we employ the term “woman” and yet remain vigilant that “all women do not have the same gender?”<sup>70</sup> Or “name as ‘woman’ that disenfranchised woman whom we strictly, historically, geopolitically *cannot imagine* as a literal referent” rather than reproduce the very normativity that has occluded an understanding of the differential production of gender?<sup>71</sup> By assuming that woman designates a known referent, an a priori unity, a precise bundle of easily recognizable characteristics, traits, and dispositions, we fail to attend to the contingent and disjunctive production of the category.

In other words, woman must be disassociated from the white middle-class female subject who norms the category. Thus the disregard for the sexual violation of enslaved women, the reproduction of subordination, and the negation of kinship cannot simply be explained or explained away as the absence of normative conditions of womanhood, for the work of feminist criticism is precisely the interrogation and deconstruction of this normativity rather than the determination of who is or is not woman in accordance with this measure. How can we understand the racialized engenderment of the black female captive in terms other than deficiency or lack in relation to normative conditions and instead understand this production of gender in the context of very different economies of power, property, kinship, race, and sexuality?

As well, if we approach this disavowal of violence and disregard of injury as specific to female engenderment and as largely defining the category "woman" rather than "captive," do we reproduce the presumed masculinity of the categories "person" and "slave"? What happens if we assume that the female subject serves as a general case for explicating social death, property relations, and the pained and punitive construction of blackness? What would be made possible if, rather than assuming the subject, we began our inquiry with a description of subjectification that did not attempt to name or interpret anything but to simply describe its surfaces? How would woman be cast in this process? Could we, in fact, release the category of woman from its fixity and white normativity and likewise examine racial subjection in articulation with engenderment? What possibilities of resignification would then be possible?<sup>72</sup>

The disregard of sexual injury does not divest slave women of gender but reveals the role of property relations—the possession of the enslaved—and racial subjugation in the constitution of gender and sexuality. In this case, possession occurs not via the protections of the patriarchal family and its control of female sexuality but via absolute rights of property. Therefore terms like "protection," "domesticity," and "honor" need to be recognized as specific articulations of racial and class location. The captive female does not possess gender as much as she is possessed by gender—that is, by way of a particular investment in and use of the body. What "woman" designates in the context of captivity is not to be explicated in terms of domesticity or protection but in terms of the disavowed violence of slave law, the sanctity of property and the necessity of absolute submission, the pathologizing of the black body, the restriction of black sentence, the multifarious use of property, and the precarious status of the slave within the public sphere. For example, the instrumental deployment of sexuality operated in disregard of white regulatory norms like chastity and marriage because of the civil status of the enslaved, the strategies of domination, and the constituent features of slavery as a mode of production—the fungibility of life, the ownership of labor, and the value of the slave as both a direct producer and a commodity. Within this economy, legitimate and proper relations were foreclosed. The particular investment in and exploitation of the captive body dissolved all networks of alliance and affiliation not defined by property ownership. This was evidenced by the courts' description of slave children neither as illegitimate nor bastards but as simply "not legitimate."<sup>73</sup>

At issue here is the construction of "woman" not as a foundational category with given characteristics, attributes, or circumstances but within a particular racial

economy of property that intensified its control over the object of property through the deployment of sexuality. Despite the proclaimed ties of affinity between those born and bred together, the enslaved female was subjected to violence within the plantation household and within the public arena. Within the private realm of the plantation household, she was subject to the absolute dominion of the owner and also experienced abuse within the slave enclave, and in the public sphere absolute submission defined the relation of the "public" to the black body. The law's failure to recognize rape as neither crime nor injury can be related to the prerogatives and entitlements of the private sphere, the full enjoyment of property that defined the rights of slave owners, and, in the public sphere, the necessity of black submission and the decriminalization of white violence requisite to preserving the public good.

What becomes clear is the contingency of woman as a category. While in the context of slave law, woman is figured, in this instance, in relation to the negation of injury, in the context of slave relations, men are also subject to forms of sexual violation and, notwithstanding, the enslaved fashion themselves as gendered subjects in accordance with their own norms of masculinity and femininity. Therefore, I do not claim or think it is possible to establish the constancy of woman across these varied territories. In many respects, the exploitation of the captive body makes the experience of men and women more similar than different, yet the enslaved recognized themselves as gendered subjects and the law also constructed gendered subjects, if only in regard to the severity of punishment and disavowal of injury.<sup>74</sup> In light of these remarks, what does the name "woman" designate within Cobb's restricted scope of subjective value? Does it merely mark the disavowed violence and pained condition of enslavement or make palpable the negligible injury? Does the condition of the enslaved female suggest an obtuseness to pain and injury? By interrogating gender within the purview of "offenses to existence" and examining female subject-formation at the site of sexual violence, I am not positing that forced sex constitutes the meaning of gender but that the erasure or disavowal of sexual violence engendered black femaleness as a condition of unredressed injury, which only intensified the bonds of captivity and the deadening objectification of chattel status.<sup>75</sup> Unlike the admittedly indispensable and requisite violence of *State v. Mann*, or the protections extended to other forms of injury, and the criminalization of particular acts of violence—homicide, mayhem, and battery—despite the procedural restrictions that made prosecution extremely difficult, if not nearly impossible, rape was unredressed and disavowed. Ironically, the intervention of affection and the calculation of black sentence intensified the violence legitimated within the scope of the law, and, in this way, the effort to regulate violence simply underscored the categories of unredressed injury. In the very effort to recognize the slave as person, blackness was reinscribed as pained and punitive embodiment and black humanity was constituted as a state of injury and punishment.

### The Shadow of the Law

The failure to recognize the damage of sexual violation, the negation of the captive's will except as an incitement to punishment, and the cynical recognition of slave humanity fashioned female gender so as to relegate the aforementioned

crimes against the flesh to the category of negligible injury and thereby reduce the already brutally circumscribed scope of black humanity. Moreover, this neglect of injury comes to represent the pained and punitive calculation of subjectivity not only in its various nominations—black, chattel, woman—but also in ways that defy a singular or sovereign axis of dispossession. The negligible injury of the violated female body exemplifies the differential production of domination as it concerns the engenderment of blackness, the defiling conditions of enslavement, the racialization of gender, and the varied inroads of power. In the confines of chattel slavery, gender is discernible primarily in terms of the uses and conveyances of property, calculations of sentience, evaluations of injury, and determinations of punishment.

The indifference to injury, the extended use and dispossession of the captive body, the negation of motherhood, and the failures and omissions of law are explored in Harriet A. Jacobs's *Incidents in the Life of a Slave Girl, as Written by Herself* as primary determinations of gender and as the very elements that inaugurate the crisis of consent or consensual sexual relations under domination. Jacobs requires that we consider not only the restricted scope of black humanity but also the effort to act as a desiring subject in a context in which consent inadequately designates the enactment of possibility and the constraints of agency.<sup>76</sup> By exploring these issues within the frame of seduction, the narrative precludes facile distinctions that would enable us to disentangle desire and domination or purportedly willed exchange from coercion. By underlining the unwieldiness of sexuality—the entanglements of instrumentality and pleasure—and the crisis induced by this contradictory state of affairs, *Incidents* challenges conventional interpretations that deem issues of desire and consent irrelevant in the context of enslavement or celebrate desire as the triumph of the captive will. To the contrary, the narrative illuminates the equivocations that surround agency, the unavoidable linkages of desire and domination, and the dangers of seduction. The nexus of desire, consent, and coercion that situates the discussion of the slave girl's sexuality perhaps entails a reconsideration of seduction that attends to the agency of the dominated in terms other than those we have previously considered, for if not a conspiracy of power, seduction in this instance enables opportunities for disruption and offers a glimpse of possibility in the context of peril.

The dangers of seduction, as stated earlier, concern the insinuation and simulation of the subordinate's will and the containment of agency within a repressive problematic of consent in order to legitimate the arrangements of power and dominance. This repressive problematic of consent enacts the captive will through the displacement of culpability and the designation of the enslaved as the originary locus of transgression, liability, and shame. The question that we have yet to decide is whether there is more at stake in seduction than the legitimation and disavowal of despotic power and the displacement of culpability via the simulation of the slave's agency. However, *Incidents*, by utilizing seduction and inquiring into its dangers, suggests the possible gains to be had by "making do" with or "using" seduction. Such an effort is fraught with perils precisely because there is no secure or autonomous exteriority from which the enslaved can operate or to which they can retreat. The double-edged nature of this gaming with power threatens to intensify constraints, rend the body, or

result in inevitable losses since within this domain the chances of safeguarding gains are already foreclosed. Therefore, how does one act without exacerbating the constraints of captivity or the violation of surrender?

The question arises as to whether seduction can provide a way of acquiring power or remains the exclusive purchase of the dominant—that is, a strategic disavowal of power that masks the violence of property relations and the despotism of the domestic institution behind the guise of the subaltern's willed surrender and consent to subjection. Can seduction also serve as a weapon of the weak or a vehicle for the articulation of needs and desires? Is it possible to consider the contested interaction of the captive female and white man/owner within this frame? Do points of resistance inhabit the enactment of willed surrender, or is it a surrender of another order? If the latter is the case, then the delineations of power are murky and uncertain. This does not mitigate the brutality or instrumentality of seduction but signals a use of tactics or possibilities previously unconsidered. As deployed in Jacobs's narrative, seduction suggests both agency and subjection. However, the exploration of seduction in *Incidents*, unlike that of slave law, strives to differentiate between the constraints of circumstance, which render consent inadequate as an explication of the negotiation and manipulation of power enacted by the enslaved, and the coercive annexation of the captive body, which makes it prey to the unrestricted uses and whims of the other. As well, the relation of injury and subjectivity is revisited at crucial sites of the law's repression and omission—the sexual violation of the captive female, the negation of kinship, and the (dis)possession of the body and its issue. These elements or "incidents" determine the condition of enslavement and engenderment. Unlike the law's discourse of seduction, in which the equivocations of will and submission are taken as the guarantees of reciprocity and possible reversals of power, the equivocations of seduction in *Incidents* concern issues of calculation, coercion, and the rendering of fact in the law's domain. More important, the textual staging of the scenario of seduction provides an opportunity to explore the meaning of consent from the perspective of the dispossessed and non-contractual subject. This exploration of consent specifically addresses the possibilities for action, recognition, and relationality that exist in the default of consent, for "deliberate calculation" reckons with the possibilities for agency that exist under conditions of duress, coercion, dispossession, manipulation, and constraint. Seduction, as the vehicle of this exploration, raises the question of whether a noncontractual subject can give consent and, if so, under what terms?

### The Narrative of Seduction

*Incidents* makes use of seduction and recasts it by emphasizing the degradations of enslavement, the perverse domesticity of the paternal institution, and the violence enacted on the captive body within an arena purportedly defined by ties of sentiment, mutual affection, and interest. The narrative recounts endless episodes of violence as a way of exposing the tacit entitlements of property relations and the "living death" of slavery and attending to the unredressed injury of the enslaved. In this deployment of seduction, the law's production of injury is roundly condemned,



precisely as the inadequacy of consent and the enactment of desire in the context of domination is considered. This exploration implicitly renders a more complex vision of power and the possible and circumscribed terms of agency by refusing to pose the question of desire in terms of compulsion versus unhindered choice. By doing so, the text represents the complicated terrain of the sexual and the limited possibilities for action under constraint and duress. This is accomplished by demystifying virtue and disclosing the legal mechanisms that secure and safeguard it. Virtue and consent are resituated through an analysis of the sexual contract—marriage, paternity, and the protection of the daughter's purity.<sup>77</sup> The textual performance of seduction historicizes virtue by revealing the role of the law in sustaining and defiling virtue. The work of narrative entails making visible the mechanisms that deny, repress, and redescribe injury and that produce and sustain chastity as a racial and class entitlement. Furthermore, it strives to grapple with the risky enterprise of desire and the pleasures of inviolate and nonpunitive embodiment.

"A Perilous Passage in the Slave Girl's Life" enacts the dilemma of seduction in the navigation of fated surrender and compulsion. As the following passage makes clear, the "deliberate calculation" of interest and the hope to avoid degrading and coerced submission rather than the freedom to choose the objects of one's affection determine what might be described as an "exchange" for freedom: "It seems less degrading to give one's self, than to submit to compulsion. There is something akin to freedom in having a lover who has no control over you, except what he gains by kindness and attachment. A master may treat you as rudely as he pleases, and you dare not speak. . . . Revenge and articulations of interest were added to flattered vanity and sincere gratitude for kindness. I knew nothing would enrage Dr. Flint so much as to know that I favored another; and it was something to triumph over my tyrant even in that small way."<sup>78</sup> Although "giv[ing] one's self" occurs without the coercion of violent threats, ownership, and direct control and is described as "akin to freedom," it is within the scope of power and domination that invariably structure the relations between white man and slave woman. It is important to note that it is not equality or the absence of constraint that is celebrated in this inscription of "calculation" but the possible gains to be made within the context of domination. Jacobs emphasizes this by describing Linda Brent's (Jacobs's pseudonymous identity) act as "something akin to freedom" but different from the freedom to choose the object of one's affection enjoyed by white women because of the legitimate/legal domestic arrangements of the white family (54).

Linda's choice cannot be explicated within the range of options available to white women. "Akin to freedom" expresses the limited possibilities, constraint, despair, and duress that condition the giving of the self, not unlimited options, freedom, or unencumbered choice. Even if we understand protection as an idealization of the control and regulation of white female sexuality, the point is that the "fall from virtue" is only intelligible in a context in which there is customary and legal protection of women, whether realized through the legitimation of marriage, the recognition of paternal right, or the criminalization of sexual violence. The status of this act, whether a "headlong plunge" or a revengeful and interested bid for freedom, matters less than the exercise of quite restricted agency over and against coercion and compulsion. It is an option that is the "less degrading" and intelligible

only within the scope of "laws [that] reduce you to the condition of chattel" and that make slaves "entirely subject to the will of another" (55).

Thus the issue of consent is framed by the law's negation of the captive will and the violent domination of slave relations.<sup>79</sup> Yet if this restricted or truncated state of consent is determined by the law's failures and omissions, it also critically refracts the nonconsent that ever and always stipulates the willingness of the captive female. Certainly the belabored comparison between the domestic arrangements of free white Northern women and those of slavery is intended to expose the role of the law in the construction and negation of consent in the patriarchal family and in the plantation household. In this regard, it is appropriate that Dr. Flint can only make sense of Linda's calculated defiance, this "acting out" or acting on behalf of hoped-for freedom, revenge, kindness, and affection, as a crime, thereby reinscribing any limited exertion of will, outside the scope of the master's dominion and not for his use, as crime: "Linda . . . you have been criminal towards me." The sovereignty endowed to the slave owner extends itself in this inversion of crime and law in which the law acts to inflict injury and then deny it, and crime, in its elasticity, encompasses all efforts to escape, expose, and redress injury. The repeated use of the term "crime" throughout the narrative documents the displacement of culpability onto the enslaved and crime as a predominant mode of black subjection.<sup>80</sup>

The feat of *Incidents* is not simply its representation of the normativity of sexual violence but also the endeavor to actualize something "akin to freedom" in this context, even if it affords little more than having a lover whom one is thankful not to despise. The narrative's reconsideration of virtue and attention to injury serve to expose not only the violence of law and the inadequacy of consent but also the fact that consent is predicated on the presumption of virtue and chastity, since it is impossible for an unchaste woman to be raped. The entitlement and negation of choice thus come to depend not only on one's civil status but also on the presumption of virtue. If, as I have argued above, virtue designates a racial entitlement not accorded to the enslaved, then consent is nullified not only on the grounds of one's civil status but also on the basis of presumed sexual predilections, which in the case of slave women come to be defined by default.

### The Seduction of the Reader

The seduction enacted in "A Perilous Passage" recounts the slave girl's "fall from virtue" in order to recontextualize virtue within the economy of slavery and trouble distinctions between the virtuous and the fallen. The enactment of seduction encompasses Linda's deliberate calculations and Sands's (Linda's white lover and the father of her two children) temptations and flattery and overcomes the resistances of the reader by an orchestrated display of weakness. The shamefaced appeals to the reader and the narrative's confessional tone ultimately expose the contingency of virtue. More important they effect a reversal in which the standards of virtue are deemed inappropriate in measuring the lives of enslaved women.<sup>81</sup> The chapter's language of guilty prostration lures the reader by manipulating her investments and desires. The seemingly naive and apologetic declarations work their

designs upon the reader. This enactment of seduction exemplifies the necessary cunning required to survive slavery.<sup>82</sup> As Jacobs writes elsewhere, "Who can blame slaves for being cunning? They are constantly compelled to resort to it. It is the only weapon of the weak and oppressed against the strength of their tyrants" (100–101). The exercise of cunning ensnares the reader at precisely the point in the narrative where the contemporaneous readership was most likely to sever identification with the slave girl because of her "recklessness." However, with the aid of the "weapon[s] of the weak," the narrator masterfully exercises her authority and sustains the reader's empathic identification.

The narrator guides us through the perilous passage in the slave girl's life by documenting the constant obstacles that confront the enslaved female and the inevitability of her violation. It is the cumulative effects of these "adverse circumstances" that are responsible for her "degraded condition." The narrator's appeal situates the reader in the position of the slave girl and implores the implied reader not to judge from the virtuous perspective of those whose homes are protected by law.<sup>83</sup> After all, it is desperation, despair, and "living death" that drive Linda into the arms of Sands. Her recklessness registers the inexorability of her undoing, as well as her despair. The naïveté of a fifteen-year-old girl and the slave's longing for freedom facilitate Linda's seduction by Sands's eloquent words. By detailing the defilements that characterize the slave girl's life, the narrator instructs the reader that the "degraded condition" of the slave woman must be contextualized within the tyranny of the master-slave relationship and not naturalized as a racial predilection or propensity for sexual excess. The inescapability of this violated condition provides the narrator with the license to speak the indelicate, within defined limits, and, at the same time, forestalls the condemnation of white Northern women. The narrative creates a dramatic vortex that engulfs the reader and vividly displays the relentless forces of sexual undoing; even the most obdurate reader cannot resist such entreaties.

As is most of the narrative, "A Perilous Passage" is narrated in the mode of recollection. However, the metered mode of recollection is disrupted here by the narrator's urgency. "And *now*, reader, I come to a period in my unhappy life, which I would gladly forget if I could" (emphasis mine).<sup>84</sup> The use of "now" in Linda's recollection seems to indicate that the entire narrative had been leading to this point. "Now" reflects the urgency of the effort to keep the reader's empathy and refers to the relationship between narrative and reader, at a place where narrative control is in jeopardy. It signals an endangered moment of negotiation between reader and narrator. It indicates not only the narrative location but also the self-reflexivity of the narrative about the crisis of its authority as it attempts to navigate the contemporaneous readership through the perilous passage.<sup>85</sup> The revisited event of crisis flashes before the reader by way of this temporal eruption, which figures the fall as the imperiled present, thereby placing the reader in the moment of danger and enabling her to apprehend the enormity of the crisis and the fatedness of the slave girl's undoing. This instant of peril flashes before the reader, beckoning her to fully experience this moment of danger, this "hour of extremity" (57). The reader, overwhelmed by the pain, shame, sorrow, pleas, and guilt, falls prey to the narrator's eloquent words just as Linda fell prey to Sands.

"There may be sophistry in all this," acknowledges the narrator; however, sophistry is essential to the seduction of the reader. Though concealed by the confessional tenor and proclaimed naïveté of the narrative, the duplicity of the narrative lies in its appeal to the reader for sympathy and understanding, while actually deposing the reader as judge. While seemingly conceding the higher moral ground to the good women of the North, it introduces them to the situational ethics of the enslaved and the necessary practices of cunning, duplicity, and sophistry: "Slaves, being surrounded by mysteries, deceptions, and dangers, early learn to be suspicious and watchful, and prematurely cautious and cunning" (155). As a narrative strategy, this duplicity involves conforming to the reader's desire in order to advance contrary arguments and transform the reader's incredulity and resistance into identification and empathy.<sup>86</sup>

The crisis of seduction is ameliorated by the seductiveness of the narrative.<sup>87</sup> Conforming to the readers' desires includes pandering to their sense of moral superiority only to topple the pedestal on which they stand and unmooring them in the storm of events. The narrative explicitly states that white Northern women cannot judge the slave girl by the same standards with which they judge themselves. The narrator's humbling appeal to the reader covertly forwards her own desires and secures a recognition of those desires. The identification of the slave girl as "victim" does not negate her role as agent.

However, the narrative's negotiating of desire and violation does not entirely escape the displacement of violence and omission of injury that characterize the discourse of seduction in slave law. The displacement of violence is inscribed as what the narrator "dares not speak." The urgent and desperate effort to keep the reader within the narrator's authority creates disruptions in the narrative and provides a line of exit that enables brutal facts to be avoided. On the one hand, we are to believe that Linda eludes her master, despite the extremity of violence exercised by Flint to force her "to change this line of policy."<sup>88</sup> On the other hand, the narrator's recurring maxim—that she dare not tell the worst—the author's constant reminders that "no pen can give adequate description of the all-pervading corruption produced by slavery," and the slave girl's belief that "resistance is hopeless" would seem to make escape impossible.<sup>89</sup>

The impossibility of adequately representing the violence of slavery is due not only to the enormity of the degradation and the unwillingness of the reader to believe the extremity or obscenity of violence but also to the fact that by speaking of these crimes the narrator carries the burden of the indecent and the obscene (28). On those occasions within the frame of the narrative when Linda tries to disclose her abuse to her mistress, confide in her grandmother, or act to escape Flint's assault, she becomes the object of reproach and is encumbered with guilt, crime, and disgrace. The double bind is that she must offer testimony about these degradations in order to help her sisters in bondage but that speaking of these crimes places the burden of guilt upon her. To speak of the foul wrongs committed against her is to enact the indecent and unveil the unspeakable. As a consequence of this double bind, rape is only represented in terms of its effects—mute, pregnant women and near-white offspring. This is also the case in Elizabeth Keckley's narrative, *Behind the Scenes or Thirty Years a Slave and Four Years in the White House*, in which children stand as the

embodiment of undisclosed and unspoken sexual violence: "Suffice it to say, that he prosecuted me for four years, and I—I—became a mother." The elisions articulate both the literal absence of rape in the law, "the edicts of that society which deemed it no crime to undermine the virtue of [slave] girls," and the textual crisis engendered by the effort to represent it.<sup>90</sup>

The unspoken and the censored haunt the narrative: "The degradations, the wrongs, the vices, that grow out of slavery are more than I can describe. They are greater than you would willingly believe."<sup>91</sup> The constraints on what can be said, the impossibility of representing the magnitude of slavery's violence, and the pain of recollection account for the selective character of the narrative: "I know that some are too much brutalized by slavery to feel the humiliation of their position; but many slaves feel it most acutely, and shrink from the memory of it."<sup>92</sup> Is the evasion of rape in the narrative thus an evasion of memory? Does anticipated disbelief on the part of the reader and the pain of recollection prohibit a full disclosure? Or can Jacobs's evasion be attributed to a concern for the reader's sensibility and delicacy? The avowedly fragmentary character of the narrative and the inhibitions to full disclosure prevent us from easily championing Linda's purported escape from Dr. Flint's sexual assault(s).

The anxiety and withholding that characterize the accounts of sexual violence in the narrative are determined by a complex of factors: the law's disavowal of violence, the strictures of decency, the pain of recollection, the resistance of the reader, and the conventions of sentimental literature.<sup>93</sup> In a letter to Amy Post, Jacobs described the difficulty involved in presenting a full account of her past because of the degradations she experienced and the pain of remembrance: "I have striven faithfully to give a true and just account of my own life in slavery. There are some things that I might have made plainer—Woman can whisper her cruel wrongs into the ear of a dear friend much easier than she could record them." The dashes in Jacobs's letter to Post, like the admittedly selective incidents of the narrative, obscure the materiality of violence in order to avoid the pain and humiliation necessarily a part of its retelling. If one thinks of these dashes and elisions as literal and figurative cuts in the narrative, then they display and displace the searing wounds of the violated and mute body, a body that acts out its remembrances without the symbolic endowments to articulate its history of injury. The dashes, ellipses, and circumlocutions hint at the excluded term by way of the bodies of slave women. The bodies of these women are textual enigmas to be interpreted by the reader since they are literally pregnant with the secrets of slavery. These figures dramatize the predicament of embodiment. This is not uncommon in sentimental fiction, where "bodily signs are adamantly and repeatedly presented as the preferred and most potent mechanisms both for communicating meaning and marking the fact of its transmission."<sup>94</sup> The sheer magnitude of violence exceeds the scope of the representable and prevents a full disclosure of slavery's crimes. Even descriptions that "fall far short of the facts" risk prurience and entail a Sisyphean effort to unveil that which is said not to exist in the law's domain of fact.

The anxiety that attends Jacobs's understated and avowedly selective narration of these crimes must also be attributed to the ensnaring character of crime—its ability to engulf its object and dislodge responsibility onto its victim. In the absence of a

licit space for the captive female's desire, it, too, becomes engulfed as crime. Not only do the enslaved bear the burden of crime, the onus of guilt indissociable from speaking of the foul wrongs of slavery, and the punishment essential to the constitution of the subject, but also the inability to marry renders all desire illegitimate, as it is unlicensed, extralegal, and without a sanctioned domain. Consequently, the defilements and violations of slavery are incorporated as shame. Just as sophistry articulates the constraints of agency, shame reveals the legal predicament of the subject, defined by the negation of will and illicit and unlawful willfulness. Shame symptomatically articulates the inevitable construction of desire, willfulness, and agency in terms of the illicit, the dishonorable, and the unlawful. Within the economy of slavery, neither love nor desire is legitimated through the formal recognition of relationality, as in marriage, consensual relations, or parenting. They are simply not legitimate. In short, they are neither recognized nor endowed with legal right. In order to create a space for desire, fully cognizant of this absence of right, the narrative emphasizes the role of law in determining the (il)legitimacy of desire and the inevitability of wrongdoing. As a structure of feeling, shame expresses the devaluation of chattel status, the dissolution experienced in being absolutely subject to another, and the recognition of one's abjection. It denotes the affective dimension of the general condition of dishonor constitutive of enslavement.<sup>95</sup> In this regard, being "shamefaced at the telling" cannot be explained solely by contrasting it with virtue or true womanhood; it registers the particular mechanisms of subjection.

Ironically, Linda's feelings of disgrace are conditioned by the very act that grants a limited and provisional freedom. If deliberate calculation is unable to effect an "event," a reversal of forces in the relations of domination, it is clearly double-edged, for the bid for freedom culminates in another "tie" or "link" to bondage. The same act both holds out the possibility of freedom and intensifies the burdens and constraints of enslavement. If this negotiation of desire is eclipsed by shame, it is also important to recognize the transience of this desire and its resolutely ambivalent character. It is renounced and justified. It is fueled by the need for recognition, protection, and reciprocity and by revenge, yet it can be neither sustained nor actualized because of the absence of a proper domain. As a consequence, desire presupposes guilt. However, since Jacobs foregrounds the role of the law in the construction of the "not legitimate," guilt must be seen as the social production of wrongdoing due to the absence of lawful networks of exchange, the inability to form contracts, and the negation of sociality, and as a result, calculation rather than courtship, purchase rather than proposal, manumission rather than marriage delimit the circuits of desire in the economy of slavery.

These circuits or perilous passages occur in the default of legal, sound, or suitable arrangements. Outside the shadow of law, compulsion eclipses choice, as neither right nor protection secures the line between consent and nonconsent. Therefore, the effort to distinguish between being compelled to submit and "giving oneself" relies on Flint's vile proposals and assaults in order to define choice by contradistinction. Nonetheless, the line between something akin to choice and nonconsent is permeable and uncertain because an absolute distinction between them cannot be sustained in the context of slave relations. This uncertainty expresses the dilemma of consent for the noncontractual subject. The very term "deliberate calculation," in contrast



to "free choice," illuminates the incommensurability of consent and its indebtedness to a contractual model of social relations. Choice is a legal entitlement beyond the scope of the enslaved, who are reduced to chattel, unprotected by law, and "entirely subject to the will of another" (55). At the same time, the narrative endeavors to represent Linda's choice, precisely in order to make claims for freedom, claims that are only intelligible within the terms of willed exchange, self-possession, and the alienability of the self as property definitive of liberty.

Despite the effort to differentiate between compulsion and "giving oneself," coercion and calculation become interwoven in the narrative as in the law. Largely because the assertion of consent requires an impossible approximation, it assumes a space of desire defined neither by white dominance ("a lover who has no control over you") nor by coercion, but by kindness and willed exchange ("it seems less degrading to give one's self"). In addition, this "giving of the self" presupposes a degree of autonomy over the self in order to be able to facilitate this transaction. This "deliberate calculation" acts as a transmutation of property in which chattel, absolutely subject to the will of another, gives way to property in the self. As in the case of "stealing away," the slave's property in the self is defined not by possession or legal title, customarily understood as inalienable rights, but by appropriation and theft. The relation of the enslaved to the self is possible only by way of wrongful possession or possession without right or permission. Thus the deliberate calculation reinscribes the status of the self as property in order to undo it. This is true on a formal and substantive level in that Linda hopes this exchange will result in freedom for herself and her children. Consequently, this state "akin to freedom," like freedom itself, reveals the indebtedness of liberty to property and to an alienable and exchangeable self.

The effort to represent desire and momentarily grant it a space requires that a degree of choice, however constrained, be exercised, or else there is no basis on which to differentiate Linda's relation with Sands from her relation with Flint or choice from nonconsent. Yet in the effort to distinguish between "giving one's self" and "submit[ing] to compulsion," the narrative reinscribes the paradox of seduction. Force, will, and submission become entangled in ways that obscure violence and disavow injury. This is particularly attenuated in regard to the slave girl's resistance and Linda's refusal to "yield" to Flint. Jacobs repeatedly asserts that the slave girl's resistance to her master's violation is hopeless and her degradation inevitable. However, unlike other slave girls whipped and starved into submission, Linda eludes this fate. This is attributed to her determined will.

This assertion seems to contradict the main thrust of Jacobs's argument, which maintains that being forced to submit to the will of the master in all things defines the predicament of enslavement, yet this condition of subjection, resignation, and enforced will-lessness imposed by domination should not be mistaken for compliance or assent. It simply registers the fact that resistance is hopeless. This, coupled with the demystification of virtue, dislodges the burden of guilt that had been foisted onto the slave girl in the course of her violation. Nonetheless, in depicting Flint's assault and Linda's seemingly successful evasions of his intended rape, Jacobs contravenes this argument and inadvertently reinforces the idea that if determined enough, one can escape violation, thereby implicitly suggesting that submission is to some degree

an act of compliance and that utmost resistance establishes the meaning of nonconsent. Clearly, she does not intend to imply that the absence of physical resistance instantiates consent or that utmost resistance exclusively defines nonconsent. Nonetheless, when moving from the general to the specific, from the slave girl to Linda, she attempts to establish her innocence by strict adherence to this formula. The inability to resist one's master does not imply consent, but utmost resistance is required to establish nonconsent. These assertions are at cross-purposes and act to displace and extend the discourse of seduction, while fully illuminating the double bind of agency. This is compounded by the representation of Flint's assaults that are directed at securing Linda's submission precisely as an admission of her consent and willful participation in the coerced arrangements. Thus rather than illustrating the utter negation of consent and the triumph of violence, the event of rape would be taken as the very emblem of willful submission.

In the effort to reveal the violence requisite to acquiring submission and to document resistance, Jacobs must resort to extreme measures in order to hypothesize an exercise of will not yoked to submission. In other words, utmost resistance becomes the means by which she extricates will-lessness and willfulness or perfect submission and consent. If the possibility of refusing or evading Flint is precluded, then Linda's choice of Sands cannot be differentiated from the indiscriminate use of her body by Flint. As well, the presumption that only a chaste woman can exercise nonconsent requires that coercion be actively resisted in order to disentangle nonconsent and consent.<sup>96</sup>

The opportunity for nonconsent is required to establish consent, for consent is meaningless if refusal is not an option. Nonetheless, the very effort to demonstrate consent reveals its impossibility if consent is understood as a voluntary agreement free from constraint or compulsion or as unimpinged by relations of power and dominance. After all, if desperation, recklessness, and hopelessness determine "choosing one's lover," absolute distinctions between compulsion and assent cannot be sustained. Yielding to another or giving one's self is no less subject to constraint, though it is certainly different from and preferable to being forced to submit. Consent is unseemly in a context in which the very notion of subjectivity is predicated upon the negation of will. The impossibility of an absolute disassociation of choice and compulsion and the inability to escape the entanglements of will-lessness and willfulness constitutive of the subject of slave law condition the ambiguous representation of sexual violence in the narrative and culminate in the displacement of rape as seduction.

In light of this, how can one account for the force of determined will without reproducing the dilemmas of seduction—facile declarations of reciprocity and reversal that serve to obscure the violence of law, the extremity of domination, and the regularity of injury or reproduce injurious norms in the very effort to elude violence? It appears that seduction inevitably entails a calculated misreading or misrecognition of the state of domination, which presumes a degree of latitude in directing the conduct of others predicated upon reciprocity and the ties of mutual affection or, conversely, upon withholding and calculated action. Whether for the instrumental ends of securing subordination or in order to seize opportunities to protect oneself and further one's aims under conditions that one does not control, it assumes that the

enslaved possess the power to withhold and/or exercise influence by giving or yielding. Do the provisional forms of action available to the enslaved necessarily entail utopian premises that assume a greater degree of power and possibility than usually exists? Are these misreadings necessary and purposeful? Can these impossible approximations of the desired and the longed for be refused, or are they simply an aspect of the arduous and imaginative labor required in advancing claims for freedom? If these tactics are unable to effect reversals of power and instead evidence the provisionality of resistance and the magnitude of domination, at the very least, they are guided by the yearning to refashion and transform the given.<sup>97</sup>

Contrary to the instrumental will that produces the docile body or the simulated will of the enslaved that underwrites the brutality and beneficence of the master-slave relation in cases like *State v. Mann*, the determined will that enables Linda to elude Flint is not a form of action or can-do-ness guaranteed by volition or self-possession but a rudimentary form of action harnessed by constraint. It is an exercise of will estranged from the assured and univocal expressive capacity of the intending subject. Rather, it is constrained and contradictory. Nonetheless, Jacobs's invocation of the determined will is an effort to enact and imagine the will in terms other than the reproduction of subordination or the incitement to punishment; it is an occasion for action and change.

In order to act, Linda must to a degree "assume the self," not only in order to "give herself" but also to experience something akin to freedom. This deliberate calculation enables the experience of a limited freedom; however, it requires that she take possession and offer herself to another. This act also intensifies the constraints of slavery and reinscribes her status as property, even if figuratively property of another order, at the very moment in which she tries to undo and transform her status. If she must enter this exchange in a bid for freedom, then it serves to reveal the indebtedness of freedom to notions of property, possession, and exchange.<sup>98</sup> This order of property, although markedly different from that of chattel slavery, essentially constructs the self as alienable and exchangeable, and notably sexuality is at the heart of this exchange. In "giving herself to another," Linda hoped to achieve her freedom and that of her children. Ultimately, what is revealed in the course of Linda's "deliberate calculation" is that the very effort to "liberate" the slave positions the self in a network of exchange underwritten by the extrications of constraint, property, and freedom.

At the conclusion of the narrative, Jacobs writes: "Reader, my story ends with freedom; not in the usual way, with marriage. I and my children are now free! We are as free from the power of slaveholders as are the white people of the north; and though that, according to my ideas, is not saying a great deal, it is a vast improvement in my condition." This implicit critique of the limits of formal freedom without independence, prefigured by the "loophole of retreat," anticipated the burdened individuality that awaited the emancipated masses whose only resource was newly acquired property in the self.

## PART TWO

### *The Subject of Freedom*

## *The Burdened Individuality of Freedom*

The limits of political emancipation appear at once in the fact that the state can liberate itself from constraint without man himself being really liberated; that a state may be a free state without man himself being a free man.

—Karl Marx, *On the Jewish Question* (1843)

The emancipation of the slaves is submitted to only in so far as chattel slavery in the old form could not be kept up. But although the freedman is no longer considered the property of the individual master, he is considered the slave of society.

—Carl Schurz, *Report on the Condition of the South* (1865)

Are we to esteem slavery for what it has wrought, or must we challenge our conception of freedom and the value we place upon it?

—Orlando Patterson, *Slavery and Social Death* (1982)

The entanglements of bondage and liberty shaped the liberal imagination of freedom, fueled the emergence and expansion of capitalism, and spawned proprietorial conceptions of the self. This vexed genealogy of freedom plagued the great event of Emancipation, or as it was described in messianic and populist terms, Jubilee. The complicity of slavery and freedom or, at the very least, the ways in which they assumed, presupposed, and mirrored one another—freedom finding its dignity and authority in this “prime symbol of corruption” and slavery transforming and extending itself in the limits and subjection of freedom—troubled, if not elided, any absolute and definitive marker between slavery and its aftermath.<sup>1</sup> The long-standing and intimate affiliation of liberty and bondage made it impossible to envision freedom independent of constraint or personhood and autonomy separate from the sanctity of property and proprietorial notions of the self. Moreover, since the dominion and domination of slavery were fundamentally defined by black subjection, race appositely framed questions of sovereignty, right, and power.<sup>2</sup>

The traversals of freedom and subordination, sovereignty and subjection, and autonomy and compulsion are significant markers of the dilemma or double bind of freedom. Marx, describing a dimension of this paradox, referred to it with dark humor as a double freedom—being free to exchange one’s labor and free of material resources. Within the liberal “Eden of the innate rights of man,” owning easily gave



way to being owned, sovereignty to fungibility, and abstract equality to subordination and exploitation.<sup>3</sup> If sovereignty served "to efface the domination intrinsic to power" and rights "enabled and facilitated relations of domination," as Michel Foucault argues, then what we are left to consider is the subjugation that rights instigate and the domination they efface.<sup>4</sup>

The task of the following chapters is to discern the ways in which emancipatory discourses of rights, liberty, and equality instigate, transmit, and effect forms of racial domination and liberal narratives of individuality idealize mechanisms of domination and discipline. It is not simply that rights are inseparable from the entitlements of whiteness or that blacks should be recognized as legitimate rights bearers; rather, the issue at hand is the way in which the stipulation of abstract equality produces white entitlement and black subjection in its promulgation of formal equality. The fragile "as if equal" of liberal discourse inadequately contends with the history of racial subjection and enslavement, since the texture of freedom is laden with the vestiges of slavery, and abstract equality is utterly enmeshed in the narrative of black subjection, given that slavery undergirded the rhetoric of the republic and equality defined so as to sanction subordination and segregation. Ultimately, I am trying to grapple with the changes wrought in the social fabric after the abolition of slavery and with the nonevent of emancipation insinuated by the perpetuation of the plantation system and the refiguration of subjection.

In exploring these issues and in keeping with the focus on everyday practices, I examine pedagogical handbooks designed to aid freed people in the transition from slavery to freedom, the itinerancy of the freed and other "exorbitant" practices, agricultural reports concerned with the productivity of free labor, political debate on the Reconstruction Amendments, and legal cases in order to consider the discrepant bestowal of emancipation. The narratives of slavery and freedom espoused in these disparate sources vied to produce authoritative accounts of liberty, equality, free labor, and citizenship. This generally entailed a deliberation on the origins of slavery, if not the birth of the republic, the place of slavery in the Constitution, the substance of citizenship, and the lineaments of black freedom.

By examining the metamorphosis of "chattel into man" and the strategies of individuation constitutive of the liberal individual and the rights-bearing subject, I hope to underscore the ways in which freedom and slavery presuppose one another, not only as modes of production and discipline or through contiguous forms of subjection but as founding narratives of the liberal subject revisited and revisioned in the context of Reconstruction and the sweeping changes wrought by the abolition of slavery. At issue are the contending articulations of freedom and the forms of subjection they beget. It is not my intention to argue that the differences between slavery and freedom were negligible; certainly such an assertion would be ridiculous. Rather, it is to examine the shifting and transformed relations of power that brought about the resubordination of the emancipated, the control and domination of the free black population, and the persistent production of blackness as abject, threatening, servile, dangerous, dependent, irrational, and infectious. In short, the advent of freedom marked the transition from the pained and minimally sensate

existence of the slave to the burdened individuality of the responsible and encumbered freedperson.

The nascent individualism of the freed designates a precarious autonomy since exploitation, domination, and subjection inhabit the vehicle of rights. The divisive and individuating power of discipline, operating in conjunction with the sequestering and segregating control of black bodies as a species body, permitted under the guise of social rights and facilitated by the regulatory power of the state, resulted in the paradoxical construction of the freed both as self-determining and enormously burdened individuals and as members of a population whose productivity, procreation, and sexual practices were fiercely regulated and policed in the interests of an expanding capitalist economy and the preservation of a racial order on which the white republic was founded. Lest "the white republic" seem like an inflated or unwarranted rhetorical flourish, we must remember that the transformation of the national government and the citizenship wrought by the Reconstruction Amendments were commonly lamented as representing the loss of the "white man's government."<sup>5</sup>

In light of the constraints that riddled conceptions of liberty, sovereignty, and equality, the contradictory experience of emancipation cannot be adequately conveyed by handsome phrases like "the rights of the man," "equal protection of the law," or "the sanctity of life, liberty, and property." Just as the peculiar and ambivalent articulation of the chattel status of the enslaved black and the assertion of his rights under the law, however limited, had created a notion of black personhood or subjectivity in which all the burdens and few of the entitlements of personhood came to characterize this humanity, so, too, the advent of freedom and the equality of rights conferred to blacks a status no less ambivalent. The advent of freedom held forth the possibility of a world antithetical to slavery and portents of transformations of power and status that were captured in carnivalesque descriptions like "bottom rail on top this time." At the same time, extant and emergent forms of domination intensified and exacerbated the responsibilities and the afflictions of the newly emancipated. I have opted to characterize the nascent individualism of emancipation as "burdened individuality" in order to underline the double bind of freedom: being freed from slavery and free of resources, emancipated and subordinated, self-possessed and indebted, equal and inferior, liberated and encumbered, sovereign and dominated, citizen and subject. (The transformation of black subjectivity effected by emancipation is described as nascent individualism not simply because blacks were considered less than human and a hybrid of property and person prior to emancipation but because the abolition of slavery conferred on them the inalienable rights of man and brought them into the fold of liberal individualism. Prior to this, legal precedents like *State v. Mann* and *Dred Scott v. Sanford* made the notions of blacks' rights and black citizenship untenable, if not impossible.)

The antagonistic production of abstract equality and black subjugation rested upon contending and incompatible predications of the freed—as sovereign, indivisible, and self-possessed and as fungible and individuated subjects whose capacities could be quantified, measured, exchanged, and alienated. The civil and political rights bestowed upon the freed dissimulated the encroaching and invasive forms of social control exercised over black bodies through the veneration of custom; the regulation,

production, and protection of racial and gender inequality in the guise of social rights; the repressive instrumentality of the law; and the forms of extraeconomic coercion that enabled the control of the black population and the effective harnessing of that population as a labor force. The ascribed responsibility of the liberal individual served to displace the nation's responsibility for providing and ensuring the rights and privileges conferred by the Reconstruction Amendments and shifted the burden of duty onto the freed. It was their duty to prove their worthiness for freedom rather than the nation's duty to guarantee, at minimum, the exercise of liberty and equality, if not opportunities for livelihood other than debt-peonage. Emancipation had been the catalyst for a transformed definition of citizenship and a strengthened national state. However, the national identity that emerged in its aftermath consolidated itself by casting out the emancipated from the revitalized body of the nation-state that their transient incorporation had created.<sup>6</sup> In the aftermath of the Civil War, national citizenship assumed greater importance as a result of the Fourteenth Amendment, which guaranteed civil rights at the national level against state violation and thus made the federal government ultimately responsible for ensuring the rights of citizens.<sup>7</sup> Yet the illusory universality of citizenship once again was consolidated by the mechanisms of racial subjection that it formally abjured.

This double bind was the determining condition of black freedom. The belated entry of the newly freed into the realm of freedom, equality, and property, as perhaps expected, revealed the boundaries of emancipation and duly complicated the meaning of freedom. Certainly manhood and whiteness were the undisclosed, but always assumed, norms of liberal equality, although the Civil Rights Act of 1866 made this explicit in defining equality as being equal to white men. The challenge of adequately conveying the dilemmas generated by this delayed entry exceeds the use of descriptions like "limited," "truncated," or "circumscribed" freedom; certainly these designations are accurate, but they are far from exhaustive. This first order of descriptives begs the question of how race, in general, and blackness, in particular, are produced through mechanisms of domination and subjection that have yoked, harnessed, and infiltrated the apparatus of rights. How are new forms of bonded labor engendered by the vocabulary of freedom? Is an emancipatory figuration of blackness possible? Or are we to hope that the entitlements of whiteness will be democratized? Is the entrenchment of black subordination best understood in the context of the relations of production and class conflict? Is race best considered an effect of the operation of power on bodies and populations exercised through relations of exploitation, domination, and subjection? Is blackness the product of this combined and uneven articulation of various modalities of power? If slave status was the primary determinant of racial identity in the antebellum period, with "free" being equivalent to "white" and slave status defining blackness, how does the production and valuation of race change in the context of freedom and equality?<sup>8</sup>

The task of describing the status of the emancipated involves attending to the articulation of various modes of power, without simply resorting to additive models of domination or interlocking oppressions that analytically maintain the distinctiveness and separateness of these modes and their effects, as if they were isolated elements that could be easily enumerated—race, class, gender, and sexuality—or as if they were the ingredients of a recipe for the social whereby the mere listing of

elements enables an adequate rendering. Certainly venturing to answer these questions is an enormously difficult task because of the chameleon capacities of racism, the various registers of domination, exploitation and subjection traversed by racism, the plasticity of race as an instrument of power, and the divergent and sundry complex of meanings condensed through the vehicle of race, as well as the risks entailed in generating a description of racism that does not reinforce the fixity of race or neglect the differences constitutive of race. As well, it is important to remember that there is not a monolithic or continuous production of race. Mindful of these concerns, chapter 5, "Fashioning Obligation: Indebted Servitude and the Fetters of Slavery," and chapter 6, "Instinct and Injury: Bodily Integrity, Natural Affinities, and the Constitution of Equality," do not attempt to theorize blackness as such but instead examine varied and contested articulations of blackness in regard to issues of responsibility, will, liberty, contract, and sentiment.

If race formerly determined who was "man" and who was chattel, whose property rights were protected or recognized and who was property, which consequently had the effect of making race itself a kind of property, with blackness as the mark of object status and whiteness licensing the proprietorship of self, then how did emancipation affect the status of race? The proximity of black *and* free necessarily incited fundamental changes in the national fabric. The question persists as to whether it is possible to unleash freedom from the history of property that secured it, for the security of property that undergirded the abstract equality of rights bearers was achieved, in large measure, through black bondage. As a consequence of emancipation, blacks were incorporated into the narrative of the rights of man and citizen; by virtue of the gift of freedom and wage labor, the formerly enslaved were granted entry into the hallowed halls of humanity, and, at the same time, the unyielding and implacable fabrication of blackness as subordination continued under the aegis of formal equality. This is not to deny the achievements made possible by the formal stipulation of equality but simply to highlight the fractures and limits of emancipation and the necessity of thinking about these limits in terms that do not simply traffic in the obviousness of common sense—the denial of basic rights, privileges, and entitlements to the formerly enslaved—and yet leave the framework of liberalism unexamined. In short, the matter to be considered is how the formerly enslaved navigated between a travestied emancipation and an illusory freedom.<sup>9</sup>

When we examine the history of racial formation in the United States, it is evident that liberty, property, and whiteness were inextricably enmeshed. Racism was central to the expansion of capitalist relations of production, the organization, division, and management of the laboring classes, and the regulation of the population through licensed forms of sexual association and conjugal unions and through the creation of an internal danger to the purity of the body public. Whiteness was a valuable and exclusive property essential to the integrity of the citizen-subject and the exemplary self-possession of the liberal individual. Although emancipation resulted in a decisive shift in the relation of race and status, black subordination continued under the aegis of contract. In this regard, the efforts of Southern states to codify blackness in constitutions written in the wake of abolition and install new measures in the law that would secure the subordination of freed black people demonstrate the prevailing disparities of emancipation. The discrepant production of

blackness, the articulation of race across diverse registers of subjection, and the protean capacities of racism illuminate the tenuousness of equality in a social order founded on chattel slavery. Certainly the freed came into "possession" of themselves and basic civil rights consequent to the abolition of slavery. However, despite the symbolic bestowal of humanity that accompanied the acquisition of rights, the legacy of freedom was an ambivalent one. If the nascent mantle of sovereign individuality conferred rights and entitlements, it also served to obscure the coercion of "free labor," the transmutation of bonded labor, the invasive forms of discipline that fashioned individuality, and the regulatory production of blackness.

Notwithstanding the dissociation of the seemingly inviolable imperial body of property resulting from the abolition of slavery and the uncoupling of the master-and-slave dyad, the breadth of freedom and the shape of the emergent order were the sites of intense struggle in everyday life. The absolute dominion of the master, predicated on the annexation of the captive body and its standing as the "sign and surrogate" of the master's body, yielded to an economy of bodies, yoked and harnessed, through the exercise of autonomy, self-interest, and consent. The use, regulation, and management of the body no longer necessitated its literal ownership since self-possession effectively yielded modern forms of bonded labor. However, as Marx observed with notable irony, the pageantry of liberty, equality, and consent enacted within this veritable Eden of rights underwent a radical transformation after the exchange was made, the bargain was struck, and the contract was signed. The transactional agent appeared less as the self-possessed and willful agent than as "someone who has brought his own hide to market and now has nothing to expect—but a tanning."<sup>10</sup> Although no longer the extension and instrument of the master's absolute right or dominion, the laboring black body remained a medium of others' power and representation.<sup>11</sup> If the control of blacks was formerly effected by absolute rights of property in the black body, dishonor, and the quotidian routine of violence, these techniques were supplanted by the liberty of contract that spawned debt-peonage, the bestowal of right that engendered indebtedness and obligation and licensed naked forms of domination and coercion, and the cultivation of a work ethic that promoted self-discipline and induced internal forms of policing. Spectacular displays of white terror and violence supplemented these techniques.<sup>12</sup>

At the same time, the glimpse of freedom enabled by the transformation from chattel to man fueled the resistance to domination, discipline, and subjugation, for the equality and personal liberty conferred by the dispensation of rights occasioned a sense of group entitlement intent on collective redress as these newly acquired rights also obfuscated and licensed forms of social domination, racial subjection, and exploitation. Despite the inability of the newly emancipated to actualize or enjoy the full equality or freedom stipulated by the law and the ways in which these newly acquired rights masked the modes of domination attendant to the transition from slavery to freedom, the possession of rights was nonetheless significant.

The failures of Reconstruction are perhaps best understood by examining the cross-hatchings of slavery and freedom as modes of domination, subjection, and accumulation.<sup>13</sup> Just as "the veiled slavery of wage labourers in Europe needed the unqualified slavery of the New World as its pedestal," so, too, did slavery provide the pedestal upon which the equality of rights appeared resplendent and veil the

relations of domination and exploitation harbored in the language of rights. If the violation of liberty and rights exacted by slavery's presence disfigured the revolutionary legacy of 1776—life, liberty, and the pursuit of happiness—then no less portentous was the legitimation and sanctioning of race as a natural ordering principle of the social during the transformation of national identity and citizenship. The legacy of slavery was evidenced by the intransigence of racism, specifically the persistent commitment to discriminatory racial classifications despite the prohibition of explicit declarations of inequality or violations of life, liberty, and property based on prior condition of servitude or race. On one hand, the constraints of race were formally negated by the stipulation of sovereign individuality and abstract equality, and on the other, racial discriminations and predilections were cherished and protected as beyond the scope of law. Even more unsettling was the instrumental role of equality in constructing a measure of man or descending scale of humanity that legitimated and naturalized subordination. The role of equality in the furtherance of whiteness as the norm of humanity and the scale and measure of man was not unlike the surprisingly adverse effects wrought by the judicial assessment of the Thirteenth Amendment, which resulted in progressively restricted notions of enslavement and its incidents that, in turn, severely narrowed the purview of freedom.

The advent of freedom was characterized by forms of constraint that, resembling those experienced under slavery, relied primarily on force, compulsion, and terror and others that fettered, restricted, and confined the subject precisely through the stipulation of will, reason, and consent. Moreover, the revolution of sentiment consequent to emancipation supplanted paternalist affections with racial antipathy and reciprocity with revulsion. This discrepant or discordant bestowal of emancipation can be gleaned in a variety of everyday sites and practices. To this end, I employ instructive handbooks for the freed, the Reconstruction Amendments, technical handbooks of plantation management, labor contracts, and everyday practices as templates for reading these contending articulations of freedom and the forms of subjection they engendered. As stated earlier, the term "burdened individuality" attempts to convey the antagonistic production of the liberal individual, rights bearer, and raced subject as equal yet inferior, independent yet servile, freed yet bound by duty, reckless yet responsible, blithe yet brokenhearted. "Burdened individuality" designates the double bind of emancipation—the onerous responsibilities of freedom with the enjoyment of few of its entitlements, the collusion of the disembodied equality of liberal individuality with the dominated, regulated, and disciplined embodiment of blackness, the entanglements of sovereignty and subjection, and the transformation of involuntary servitude effected under the aegis of free labor. This is not to suggest simply that blacks were unable to achieve the democratic individuality of white citizens but rather that the discourse on black freedom emphasized hardship, travails, and a burdened and encumbered existence. Therefore, burdened individuality is both a descriptive and a conceptual device utilized to explicate the particular modes and techniques of power of which the individual is the object and instrument. The power generative of this condition of burdened individuality encompassed repression, domination, techniques of discipline, strategies of self-improvement, and the regulatory interventions of the state.

The mantle of individuality effectively conscripted the freed as indebted and



dutiful worker and incited forms of coercion, discipline, and regulation that profoundly complicated the meaning of freedom. If it appears paradoxical that the nomination "free individual" illuminates the fractures of freedom and begets methods of bondage quite suited to a free labor economy, it is only because the mechanisms through which right, exchange, and equality bolster and advance domination, subjection, and exploitation have not been interrogated. Liberal discourses of freedom enable forms of subjection seemingly quite at odds with its declared principles, since they readily accommodate autonomy and domination, sovereignty and submission, and subordination and abstract equality. This can be attributed to the Lockean heritage of U.S. constitutionalism, which propounded an ideal of liberty founded in the sanctity of property, and the vision of liberty forwarded in the originary narrative of the Constitution, which wed slavery and freedom in the founding of the nation and the engendering of "we the people."<sup>14</sup> Nonetheless, the question remains as to how the effort to sever the disavowed and repressed coupling of liberty and bondage that inaugurated the republic effected new forms of domination.<sup>15</sup> How did emancipatory figurations of a rights-bearing individual aimed at abolishing the badges of slavery result in burdened individuality?

Restrictive and narrow conceptions of liberty derived from bourgeois constructions of the market, the atomizing and individualizing character of rights, and an equality grounded in sameness enabled and dissimulated the domination and exploitation of the postbellum order. Prized designations like "independence," "autonomy," and "free will" are the lures of liberalism, yet the tantalizing suggestion of the individual as potentate and sovereign is drastically undermined by the forms of repression and terror that accompanied the advent of freedom, the techniques of discipline that bind the individual through conscience, self-knowledge, responsibility, and duty, and the management of racialized bodies and populations effected through the racism of the state and civil society.<sup>16</sup> Liberalism, in general, and rights discourse, in particular, assure entitlements and privileges as they enable and efface elemental forms of domination primarily because of the atomistic portrayal of social relations, the inability to address collective interests and needs, and the sanctioning of subordination and the free reign of prejudice in the construction of the social or the private. Moreover, the universality or unencumbered individuality of liberalism relies on tacit exclusions and norms that preclude substantive equality; all do not equally partake of the resplendent, plenipotent, indivisible, and steely singularity that it proffers. Abstract universality presumes particular forms of embodiment and excludes or marginalizes others.<sup>17</sup> Rather, the excluded, marginalized, and devalued subjects that it engenders, variously contained, trapped, and imprisoned by nature's whimsical apportionments, in fact, enable the production of universality, for the denigrated and deprecated, those castigated and saddled by varied corporeal maledictions, are the fleshy substance that enable the universal to achieve its ethereal splendor.

Nevertheless, the abstract universality of the rights of man and citizen also potentially enable these rights to be enjoyed by all, at least theoretically. Thus universality can conceivably exceed its stipulated and constitutive constraints to the degree that these claims can be taken up and articulated by those subjects not traditionally entitled to the privileges of disembodied and unencumbered universality. The ab-

stractness and instability of rights make possible their resignification. Nonetheless, when those formerly excluded are belatedly conferred with rights and guarantees of equal protection, they have traditionally had difficulty exercising these rights, as long as they are seen as lesser, derivative, or subordinate embodiments of the norm. Plainly speaking, this is the gap between the formal stipulation of rights and the legitimate exercise of them.<sup>18</sup> In this regard, it is necessary to consider whether the effort of the dominated to "take up" the universal does not remedy one set of injuries only to inflict injuries of another order. It is worth examining whether universalism merely dissimulates the stigmatic injuries constitutive of blackness with abstract assertions of equality, sovereignty, and individuality. Indeed, if this is the case, can the dominated be liberated by universalist assertions?<sup>19</sup>

As citizens and rights bearers, were the newly emancipated merely enacting a role they could never legitimately or authentically occupy? Were they fated to be hapless aspirants, who in their effort to exercise newly conferred rights only revealed the distance between the norm and themselves? As Mrs. Freeman, a character from Helen E. Brown's *John Freeman and His Family*, a fictional account of emancipation, declared: "I want we should be just as near like white folks as ever we can ketch it."<sup>20</sup> Certainly this remark highlights the chasm between the mimetic and the legitimate. It is not simply fortuitous that Mrs. Freeman expresses this sentiment, for she, even more than her husband, is ill-suited for the privileges and responsibilities attendant to citizenship. The discourse of citizenship presupposed a masculinist subject on which to drape the attendant rights and privileges of liberty and equality, thus explaining why the transition from slavery to freedom was usually and quite aptly narrated as the journey from chattel to man. Alas, the joke is on Mrs. Freeman, as expressed by the convoluted phrasing and orthographic nonsense that articulate her insuperable distance from the norm and intimate the unspoken exclusions of the universal rights of man and citizen.

Chattel becomes man through the ascension to the hallowed realm of the self-possessed. The individual thus fabricated is "free from dependence on the will of others, enters relations with others voluntarily with a view of his own interest, is the proprietor of his own person and capacities, and free to alienate his labor."<sup>21</sup> Although assertions of free will, singularity, autonomy, and consent necessarily obscure relations of power and domination, the genealogy of freedom, to the contrary, discloses the intimacy of liberty, domination, and subjection. This intimacy is discerned in the inequality enshrined in property rights, the conquest and captivity that established "we the people," and the identity of race as property, whether evidenced in the corporeal inscriptions of slavery and its badges or in the bounded bodily integrity of whiteness secured by the abjection of others.<sup>22</sup> The individual, denuded in the harsh light of scrutiny, reveals a subject tethered by various orders of constraint and obscured by the figure of the self-possessed, for lurking behind the disembodied and self-possessed individual is the fleshy substance of the embodied and the encumbered—that is, the castigated particularity of the universal.<sup>23</sup> In this light, the transubstantiation of the captive into volitional subject, chattel into proprietor, and the circumscribed body of blackness into the disembodied and abstract universal seems improbable, if not impossible.

In light of these remarks, the transition from slavery to freedom cannot adequately



be represented as the triumph of liberty over domination, free will over coercion, or consent over compulsion. The valued precepts of liberalism provide an insufficient guide to understanding the event of emancipation. The ease with which sovereignty and submission and self-possession and servility are yoked is quite noteworthy. In fact, it leads us to wonder whether the insistent, disavowed, and sequestered production of subordination, the inequality enshrined by the sanctity of property, and the castigating universality of liberalism are all that emancipation proffers. Is not the free will of the individual measured precisely through the exercise of constraint and autonomy determined by the capacity to participate in relations of exchange that only fetter and bind the subject? Does the esteemed will replace the barbaric whip or only act as its supplement? In light of these questions, the identity of the emancipated as rights bearer, free laborer, and calculable man must be considered in regard to processes of domination, exploitation, and subjection rather than in the benighted terms that desperately strive to establish slavery as the "prehistory" of man.

## 5

## *Fashioning Obligation*

### INDEBTED SERVITUDE AND THE FETTERS OF SLAVERY

With the enjoyment of a freedman's privileges, comes also a freedman's duties and responsibilities. These are weighty. You cannot get rid of them; they must be met; and unless you are prepared to meet them with a proper spirit, and patiently and cheerfully to fulfil these obligations, you are not worthy of being a freedman. You may tremble in view of these duties and responsibilities; but you need not fear. Put your trust in God, and bend your back joyfully and hopefully to the burden.

—Isaac W. Brinkerhoff, *Advice to Freedmen* (1864)

It is not enough to tell us that we will be respected according as we show ourselves worthy of it. When we have rights that others respect, self-respect, pride and industry will greatly increase. I do not think that to have these rights would exalt us above measure or rob the white man of his glory.

—*National Freedman* (April 1, 1865)

Emancipation announced the end of chattel slavery; however, it by no means marked the end of bondage. The free(d) individual was nothing if not burdened, responsible, and obligated. Responsibility entailed accounting for one's actions, dutiful suppliance, contractual obligation, and calculated reciprocity. Fundamentally, to be responsible was to be blameworthy. In this respect, the exercise of free will, quite literally, was inextricable from guilty infractions, criminal misdeeds, punishable transgressions, and an elaborate micropenality of everyday life. Responsibility made man an end in himself, and as such, the autonomous and intending agent was above all else culpable. As Friedrich Nietzsche observed: "The proud realization of the extraordinary privilege of responsibility, the awareness of this rare freedom and power over himself and his destiny, has penetrated him to the depths and become an instinct, his dominant instinct: what will he call his dominant instinct, assuming that he needs a word for it? No doubt about the answer: this sovereign man calls it his conscience."<sup>1</sup> In this regard, the burden of conscience attendant to the formation of the sovereign individual was decisive not only in the ways that it facilitated self-disciplining but also in its ability to engender resentment toward and justify the punishment of those who fell below "the threshold of responsibility" or